

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE NO. 2 FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 754
95TH GENERAL ASSEMBLY
2010

3900S.09T

AN ACT

To repeal sections 193.145, 193.265, 195.080, 208.010, 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 301.142, 334.735, 337.528, 338.100, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.710, 344.010, and 344.020, RSMo, and to enact in lieu thereof fifty-two new sections relating to the licensing of certain professions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 193.145, 193.265, 195.080, 208.010, 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 301.142, 334.735, 337.528, 338.100, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.710, 344.010, and 344.020, are repealed and fifty-two new sections enacted in lieu thereof, to be known as sections 193.145, 193.265, 195.080, 208.010, 208.198, 214.160, 214.270, 214.276, 214.277, 214.282, 214.283, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.389, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 301.142, 334.735, 337.528, 338.100, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.710,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 339.845, 344.010, 344.020, 630.575, and 630.580, to read as follows:

193.145. 1. A certificate of death for each death which occurs in this state
2 shall be filed with the local registrar, or as otherwise directed by the state
3 registrar, within five days after death and shall be registered if such certificate
4 has been completed and filed pursuant to this section. **All data providers in
5 the death registration process, including but not limited to the state
6 registrar, local registrars, the state medical examiner, county medical
7 examiners, coroners, funeral directors or persons acting as such,
8 embalmers, sheriffs, attending physicians and resident physicians, and
9 the chief medical officers of licensed health care facilities, and other
10 public or private institutions providing medical care, treatment, or
11 confinement to persons shall be required to utilize any electronic death
12 registration system adopted under subsection 1 of section 193.265
13 within six months of the system being certified by the director of the
14 department of health and senior services, or the director's designee, to
15 be operational and available to all data providers in the death
16 registration process. Nothing in this subsection shall prevent the state
17 registrar from adopting pilot programs or voluntary electronic death
18 registration programs until such time as the system can be certified;
19 however, no such pilot or voluntary electronic death registration
20 program shall prevent the filing of a death certificate with the local
21 registrar or the ability to obtain certified copies of death certificated
22 under subsection 2 of section 193.265 until six months after such
23 certification that the system is operational.**

24 2. If the place of death is unknown but the dead body is found in this
25 state, the certificate of death shall be completed and filed pursuant to the
26 provisions of this section. The place where the body is found shall be shown as
27 the place of death. The date of death shall be the date on which the remains
28 were found.

29 3. When death occurs in a moving conveyance in the United States and
30 the body is first removed from the conveyance in this state, the death shall be
31 registered in this state and the place where the body is first removed shall be
32 considered the place of death. When a death occurs on a moving conveyance
33 while in international waters or air space or in a foreign country or its air space
34 and the body is first removed from the conveyance in this state, the death shall
35 be registered in this state but the certificate shall show the actual place of death

36 if such place may be determined.

37 4. The funeral director or person in charge of final disposition of the dead
38 body shall file the certificate of death. The funeral director or person in charge
39 of the final disposition of the dead body shall obtain or verify:

40 (1) The personal data from the next of kin or the best qualified person or
41 source available; and

42 (2) The medical certification from the person responsible for such
43 certification.

44 5. The medical certification shall be completed, attested to its accuracy
45 either by signature or an electronic process approved by the department, and
46 returned to the funeral director or person in charge of final disposition within
47 seventy-two hours after death by the physician in charge of the patient's care for
48 the illness or condition which resulted in death. In the absence of the physician
49 or with the physician's approval the certificate may be completed and attested to
50 its accuracy either by signature or an approved electronic process by the
51 physician's associate physician, the chief medical officer of the institution in
52 which death occurred, or the physician who performed an autopsy upon the
53 decedent, provided such individual has access to the medical history of the case,
54 views the deceased at or after death and death is due to natural causes. The
55 state registrar may approve alternate methods of obtaining and processing the
56 medical certification and filing the death certificate. The Social Security number
57 of any individual who has died shall be placed in the records relating to the death
58 and recorded on the death certificate.

59 6. When death occurs from natural causes more than thirty-six hours after
60 the decedent was last treated by a physician, the case shall be referred to the
61 county medical examiner or coroner or physician or local registrar for
62 investigation to determine and certify the cause of death. If the death is
63 determined to be of a natural cause, the medical examiner or coroner or local
64 registrar shall refer the certificate of death to the attending physician for such
65 physician's certification. If the attending physician refuses or is otherwise
66 unavailable, the medical examiner or coroner or local registrar shall attest to the
67 accuracy of the certificate of death either by signature or an approved electronic
68 process within thirty-six hours.

69 7. If the circumstances suggest that the death was caused by other than
70 natural causes, the medical examiner or coroner shall determine the cause of
71 death and shall complete and attest to the accuracy either by signature or an

72 approved electronic process the medical certification within seventy-two hours
73 after taking charge of the case.

74 8. If the cause of death cannot be determined within seventy-two hours
75 after death, the attending medical examiner or coroner or attending physician or
76 local registrar shall give the funeral director, or person in charge of final
77 disposition of the dead body, notice of the reason for the delay, and final
78 disposition of the body shall not be made until authorized by the medical
79 examiner or coroner, attending physician or local registrar.

80 9. When a death is presumed to have occurred within this state but the
81 body cannot be located, a death certificate may be prepared by the state registrar
82 upon receipt of an order of a court of competent jurisdiction which shall include
83 the finding of facts required to complete the death certificate. Such a death
84 certificate shall be marked "Presumptive", show on its face the date of
85 registration, and identify the court and the date of decree.

193.265. 1. For the issuance of a certification or copy of a death record,
2 the applicant shall pay a fee of thirteen dollars for the first certification or copy
3 and a fee of ten dollars for each additional copy ordered at that time. For the
4 issuance of a certification or copy of a birth, marriage, divorce, or fetal death
5 record, the applicant shall pay a fee of fifteen dollars. All fees shall be deposited
6 to the state department of revenue. Beginning August 28, 2004, for each vital
7 records fee collected, the director of revenue shall credit four dollars to the
8 general revenue fund, five dollars to the children's trust fund, one dollar shall be
9 credited to the endowed care cemetery audit fund, and three dollars for the first
10 copy of death records and five dollars for birth, marriage, divorce, and fetal death
11 records shall be credited to the Missouri public services health fund established
12 in section 192.900, RSMo. Money in the endowed care cemetery audit fund shall
13 be available by appropriation to the division of professional registration to pay
14 its expenses in administering sections 214.270 to 214.410, RSMo. All interest
15 earned on money deposited in the endowed care cemetery audit fund shall be
16 credited to the endowed care cemetery fund. Notwithstanding the provisions of
17 section 33.080, RSMo, to the contrary, money placed in the endowed care
18 cemetery audit fund shall not be transferred and placed to the credit of general
19 revenue until the amount in the fund at the end of the biennium exceeds three
20 times the amount of the appropriation from the endowed care cemetery audit fund
21 for the preceding fiscal year. The money deposited in the public health services
22 fund under this section shall be deposited in a separate account in the fund, and

23 moneys in such account, upon appropriation, shall be used to automate and
24 improve the state vital records system, and develop and maintain an electronic
25 birth and death registration system [which shall be implemented no later than
26 December 31, 2009]. For any search of the files and records, when no record is
27 found, the state shall be entitled to a fee equal to the amount for a certification
28 of a vital record for a five-year search to be paid by the applicant. For the
29 processing of each legitimation, adoption, court order or recording after the
30 registrant's twelfth birthday, the state shall be entitled to a fee equal to the
31 amount for a certification of a vital record. Except whenever a certified copy or
32 copies of a vital record is required to perfect any claim of any person on relief, or
33 any dependent of any person who was on relief for any claim upon the
34 government of the state or United States, the state registrar shall, upon request,
35 furnish a certified copy or so many certified copies as are necessary, without any
36 fee or compensation therefor.

37 2. For the issuance of a certification of a death record by the local
38 registrar, the applicant shall pay a fee of thirteen dollars for the first certification
39 or copy and a fee of ten dollars for each additional copy ordered at that time. For
40 the issuance of a certification or copy of a birth, marriage, divorce, or fetal death
41 record, the applicant shall pay a fee of fifteen dollars. All fees shall be deposited
42 to the official city or county health agency. A certified copy of a death record by
43 the local registrar can only be issued within twenty-four hours of receipt of the
44 record by the local registrar. Computer-generated certifications of death records
45 may be issued by the local registrar after twenty-four hours of receipt of the
46 records. The fees paid to the official county health agency shall be retained by
47 the local agency for local public health purposes.

195.080. 1. Except as otherwise in sections 195.005 to 195.425 specifically
2 provided, sections 195.005 to 195.425 shall not apply to the following cases:
3 prescribing, administering, dispensing or selling at retail of liniments, ointments,
4 and other preparations that are susceptible of external use only and that contain
5 controlled substances in such combinations of drugs as to prevent the drugs from
6 being readily extracted from such liniments, ointments, or preparations, except
7 that sections 195.005 to 195.425 shall apply to all liniments, ointments, and other
8 preparations that contain coca leaves in any quantity or combination.

9 2. The quantity of Schedule II controlled substances prescribed or
10 dispensed at any one time shall be limited to a thirty-day supply. The quantity
11 of Schedule III, IV or V controlled substances prescribed or dispensed at any one

12 time shall be limited to a ninety-day supply and shall be prescribed and
13 dispensed in compliance with the general provisions of sections 195.005 to
14 195.425. The supply limitations provided in this subsection may be increased up
15 to three months if the physician describes on the prescription form or indicates
16 via telephone, fax, or electronic communication to the pharmacy to be entered on
17 or attached to the prescription form the medical reason for requiring the larger
18 supply. **The supply limitations provided in this subsection shall not**
19 **apply if the prescription is dispensed directly to a member of the**
20 **United States armed forces serving outside the United States.**

21 3. The partial filling of a prescription for a Schedule II substance is
22 permissible as defined by regulation by the department of health and senior
23 services.

208.010. 1. In determining the eligibility of a claimant for public
2 assistance pursuant to this law, it shall be the duty of the division of family
3 services to consider and take into account all facts and circumstances
4 surrounding the claimant, including his or her living conditions, earning capacity,
5 income and resources, from whatever source received, and if from all the facts and
6 circumstances the claimant is not found to be in need, assistance shall be denied.
7 In determining the need of a claimant, the costs of providing medical treatment
8 which may be furnished pursuant to sections 208.151 to 208.158 and 208.162
9 shall be disregarded. The amount of benefits, when added to all other income,
10 resources, support, and maintenance shall provide such persons with reasonable
11 subsistence compatible with decency and health in accordance with the standards
12 developed by the division of family services; provided, when a husband and wife
13 are living together, the combined income and resources of both shall be
14 considered in determining the eligibility of either or both. "Living together" for
15 the purpose of this chapter is defined as including a husband and wife separated
16 for the purpose of obtaining medical care or nursing home care, except that the
17 income of a husband or wife separated for such purpose shall be considered in
18 determining the eligibility of his or her spouse, only to the extent that such
19 income exceeds the amount necessary to meet the needs (as defined by rule or
20 regulation of the division) of such husband or wife living separately. In
21 determining the need of a claimant in federally aided programs there shall be
22 disregarded such amounts per month of earned income in making such
23 determination as shall be required for federal participation by the provisions of
24 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments

25 thereto. When federal law or regulations require the exemption of other income
26 or resources, the division of family services may provide by rule or regulation the
27 amount of income or resources to be disregarded.

28 2. Benefits shall not be payable to any claimant who:

29 (1) Has or whose spouse with whom he or she is living has, prior to July
30 1, 1989, given away or sold a resource within the time and in the manner
31 specified in this subdivision. In determining the resources of an individual,
32 unless prohibited by federal statutes or regulations, there shall be included (but
33 subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection,
34 and subsection 5 of this section) any resource or interest therein owned by such
35 individual or spouse within the twenty-four months preceding the initial
36 investigation, or at any time during which benefits are being drawn, if such
37 individual or spouse gave away or sold such resource or interest within such
38 period of time at less than fair market value of such resource or interest for the
39 purpose of establishing eligibility for benefits, including but not limited to
40 benefits based on December, 1973, eligibility requirements, as follows:

41 (a) Any transaction described in this subdivision shall be presumed to
42 have been for the purpose of establishing eligibility for benefits or assistance
43 pursuant to this chapter unless such individual furnishes convincing evidence to
44 establish that the transaction was exclusively for some other purpose;

45 (b) The resource shall be considered in determining eligibility from the
46 date of the transfer for the number of months the uncompensated value of the
47 disposed of resource is divisible by the average monthly grant paid or average
48 Medicaid payment in the state at the time of the investigation to an individual
49 or on his or her behalf under the program for which benefits are claimed,
50 provided that:

51 a. When the uncompensated value is twelve thousand dollars or less, the
52 resource shall not be used in determining eligibility for more than twenty-four
53 months; or

54 b. When the uncompensated value exceeds twelve thousand dollars, the
55 resource shall not be used in determining eligibility for more than sixty months;

56 (2) The provisions of subdivision (1) of this subsection shall not apply to
57 a transfer, other than a transfer to claimant's spouse, made prior to March 26,
58 1981, when the claimant furnishes convincing evidence that the uncompensated
59 value of the disposed of resource or any part thereof is no longer possessed or
60 owned by the person to whom the resource was transferred;

61 (3) Has received, or whose spouse with whom he or she is living has
62 received, benefits to which he or she was not entitled through misrepresentation
63 or nondisclosure of material facts or failure to report any change in status or
64 correct information with respect to property or income as required by section
65 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for
66 such period of time from the date of discovery as the division of family services
67 may deem proper; or in the case of overpayment of benefits, future benefits may
68 be decreased, suspended or entirely withdrawn for such period of time as the
69 division may deem proper;

70 (4) Owns or possesses resources in the sum of one thousand dollars or
71 more; provided, however, that if such person is married and living with spouse,
72 he or she, or they, individually or jointly, may own resources not to exceed two
73 thousand dollars; and provided further, that in the case of a temporary assistance
74 for needy families claimant, the provision of this subsection shall not apply;

75 (5) Prior to October 1, 1989, owns or possesses property of any kind or
76 character, excluding amounts placed in an irrevocable prearranged funeral or
77 burial contract [pursuant to subsection 2 of section 436.035, RSMo, and
78 subdivision (5) of subsection 1 of section 436.053, RSMO] **under chapter 436**,
79 or has an interest in property, of which he or she is the record or beneficial
80 owner, the value of such property, as determined by the division of family
81 services, less encumbrances of record, exceeds twenty-nine thousand dollars, or
82 if married and actually living together with husband or wife, if the value of his
83 or her property, or the value of his or her interest in property, together with that
84 of such husband and wife, exceeds such amount;

85 (6) In the case of temporary assistance for needy families, if the parent,
86 stepparent, and child or children in the home owns or possesses property of any
87 kind or character, or has an interest in property for which he or she is a record
88 or beneficial owner, the value of such property, as determined by the division of
89 family services and as allowed by federal law or regulation, less encumbrances
90 of record, exceeds one thousand dollars, excluding the home occupied by the
91 claimant, amounts placed in an irrevocable prearranged funeral or burial contract
92 [pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of
93 subsection 1 of section 436.053, RSMO] **under chapter 436**, one automobile
94 which shall not exceed a value set forth by federal law or regulation and for a
95 period not to exceed six months, such other real property which the family is
96 making a good-faith effort to sell, if the family agrees in writing with the division

97 of family services to sell such property and from the net proceeds of the sale
98 repay the amount of assistance received during such period. If the property has
99 not been sold within six months, or if eligibility terminates for any other reason,
100 the entire amount of assistance paid during such period shall be a debt due the
101 state;

102 (7) Is an inmate of a public institution, except as a patient in a public
103 medical institution.

104 3. In determining eligibility and the amount of benefits to be granted
105 pursuant to federally aided programs, the income and resources of a relative or
106 other person living in the home shall be taken into account to the extent the
107 income, resources, support and maintenance are allowed by federal law or
108 regulation to be considered.

109 4. In determining eligibility and the amount of benefits to be granted
110 pursuant to federally aided programs, the value of burial lots or any amounts
111 placed in an irrevocable prearranged funeral or burial contract [pursuant to
112 subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of
113 section 436.053, RSMO,] **under chapter 436** shall not be taken into account or
114 considered an asset of the burial lot owner or the beneficiary of an irrevocable
115 prearranged funeral or funeral contract. For purposes of this section, "burial lots"
116 means any burial space as defined in section 214.270, RSMo, and any memorial,
117 monument, marker, tombstone or letter marking a burial space. If the
118 beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged
119 funeral or burial contract receives any public assistance benefits pursuant to this
120 chapter and if the purchaser of such contract or his or her successors in interest
121 **[cancel or amend] transfer, amend, or take any other such actions**
122 **regarding** the contract so that any person will be entitled to a refund, such
123 refund shall be paid to the state of Missouri [up to the amount of public
124 assistance benefits provided pursuant to this chapter with any remainder to be
125 paid to those persons designated in chapter 436, RSMO] **with any amount in**
126 **excess of the public assistance benefits provided under this chapter to**
127 **be refunded by the state of Missouri to the purchaser or his or her**
128 **successors. In determining eligibility and the amount of benefits to be**
129 **granted under federally aided programs, the value of any life insurance**
130 **policy where a seller or provider is made the beneficiary or where the**
131 **life insurance policy is assigned to a seller or provider, either being in**
132 **consideration for an irrevocable prearranged funeral contract under**

133 **chapter 436, shall not be taken into account or considered an asset of**
134 **the beneficiary of the irrevocable prearranged funeral contract.**

135 5. In determining the total property owned pursuant to subdivision (5) of
136 subsection 2 of this section, or resources, of any person claiming or for whom
137 public assistance is claimed, there shall be disregarded any life insurance policy,
138 or prearranged funeral or burial contract, or any two or more policies or
139 contracts, or any combination of policies and contracts, which provides for the
140 payment of one thousand five hundred dollars or less upon the death of any of the
141 following:

142 (1) A claimant or person for whom benefits are claimed; or

143 (2) The spouse of a claimant or person for whom benefits are claimed with
144 whom he or she is living. If the value of such policies exceeds one thousand five
145 hundred dollars, then the total value of such policies may be considered in
146 determining resources; except that, in the case of temporary assistance for needy
147 families, there shall be disregarded any prearranged funeral or burial contract,
148 or any two or more contracts, which provides for the payment of one thousand five
149 hundred dollars or less per family member.

150 6. Beginning September 30, 1989, when determining the eligibility of
151 institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical
152 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections
153 1396a et seq., the division of family services shall comply with the provisions of
154 the federal statutes and regulations. As necessary, the division shall by rule or
155 regulation implement the federal law and regulations which shall include but not
156 be limited to the establishment of income and resource standards and
157 limitations. The division shall require:

158 (1) That at the beginning of a period of continuous institutionalization
159 that is expected to last for thirty days or more, the institutionalized spouse, or
160 the community spouse, may request an assessment by the division of family
161 services of total countable resources owned by either or both spouses;

162 (2) That the assessed resources of the institutionalized spouse and the
163 community spouse may be allocated so that each receives an equal share;

164 (3) That upon an initial eligibility determination, if the community
165 spouse's share does not equal at least twelve thousand dollars, the
166 institutionalized spouse may transfer to the community spouse a resource
167 allowance to increase the community spouse's share to twelve thousand dollars;

168 (4) That in the determination of initial eligibility of the institutionalized

169 spouse, no resources attributed to the community spouse shall be used in
170 determining the eligibility of the institutionalized spouse, except to the extent
171 that the resources attributed to the community spouse do exceed the community
172 spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;

173 (5) That beginning in January, 1990, the amount specified in subdivision
174 (3) of this subsection shall be increased by the percentage increase in the
175 Consumer Price Index for All Urban Consumers between September, 1988, and
176 the September before the calendar year involved; and

177 (6) That beginning the month after initial eligibility for the
178 institutionalized spouse is determined, the resources of the community spouse
179 shall not be considered available to the institutionalized spouse during that
180 continuous period of institutionalization.

181 7. Beginning July 1, 1989, institutionalized individuals shall be ineligible
182 for the periods required and for the reasons specified in 42 U.S.C. Section 1396p.

183 8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted
184 pursuant to the provisions of section 208.080.

185 9. Beginning October 1, 1989, when determining eligibility for assistance
186 pursuant to this chapter there shall be disregarded unless otherwise provided by
187 federal or state statutes, the home of the applicant or recipient when the home
188 is providing shelter to the applicant or recipient, or his or her spouse or
189 dependent child. The division of family services shall establish by rule or
190 regulation in conformance with applicable federal statutes and regulations a
191 definition of the home and when the home shall be considered a resource that
192 shall be considered in determining eligibility.

193 10. Reimbursement for services provided by an enrolled Medicaid provider
194 to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII Medicare
195 Part B, Supplementary Medical Insurance (SMI) shall include payment in full of
196 deductible and coinsurance amounts as determined due pursuant to the
197 applicable provisions of federal regulations pertaining to Title XVIII Medicare
198 Part B, except the applicable Title XIX cost sharing.

199 11. A "community spouse" is defined as being the noninstitutionalized
200 spouse.

201 12. An institutionalized spouse applying for Medicaid and having a spouse
202 living in the community shall be required, to the maximum extent permitted by
203 law, to divert income to such community spouse to raise the community spouse's
204 income to the level of the minimum monthly needs allowance, as described in 42

205 U.S.C. Section 1396r-5. Such diversion of income shall occur before the
206 community spouse is allowed to retain assets in excess of the community spouse
207 protected amount described in 42 U.S.C. Section 1396r-5.

**208.198. Subject to appropriations, the department of social
2 services shall establish a rate for the reimbursement of physicians and
3 optometrists for services rendered to patients under the MO HealthNet
4 program which provides equal reimbursement for the same or similar
5 services rendered.**

214.160. The county commission shall invest or loan said trust fund or
2 funds only in United States government, state, county or municipal bonds, [or]
3 **certificates of deposit**, first real estate mortgages, or deeds of trust. They
4 shall use the net income from said trust fund or funds or so much thereof as is
5 necessary to support and maintain and beautify any public or private cemetery
6 or any particular part thereof which may be designated by the person, persons or
7 firm or association making said gift or bequest. In maintaining or supporting the
8 cemetery or any particular part or portion thereof the commission shall as nearly
9 as possible follow the expressed wishes of the creator of said trust fund.

214.270. As used in sections 214.270 to 214.410, the following terms
2 mean:

3 (1) "Agent" or "authorized agent", any person empowered by the cemetery
4 operator to represent the operator in dealing with the general public, including
5 owners of the burial space in the cemetery;

6 (2) "Burial space", one or more than one plot, grave, mausoleum, crypt,
7 lawn, surface lawn crypt, niche or space used or intended for the interment of the
8 human dead;

9 (3) "Burial merchandise", a monument, marker, memorial, tombstone,
10 headstone, urn, outer burial container, or similar article which may contain
11 specific lettering, shape, color, or design as specified by the purchaser;

12 (4) "Cemetery", property restricted in use for the interment of the human
13 dead by formal dedication or reservation by deed but shall not include any of the
14 foregoing held or operated by the state or federal government or any political
15 subdivision thereof, any incorporated city or town, any county or any religious
16 organization, cemetery association or fraternal society holding the same for sale
17 solely to members and their immediate families;

18 (5) "Cemetery association", any number of persons who shall have
19 associated themselves by articles of agreement in writing as a not-for-profit

20 association or organization, whether incorporated or unincorporated, formed for
21 the purpose of ownership, preservation, care, maintenance, adornment and
22 administration of a cemetery. Cemetery associations shall be governed by a board
23 of directors. Directors shall serve without compensation;

24 (6) "Cemetery operator" or "operator", any person who owns, controls,
25 operates or manages a cemetery;

26 (7) "Cemetery prearranged contract", any contract with a **cemetery or**
27 cemetery operator for [goods and services covered by this chapter which includes
28 a sale of burial merchandise in which delivery of merchandise or a valid
29 warehouse receipt under sections 214.270 to 214.550 is deferred pursuant to
30 written instructions from the purchaser. It shall also mean any contract for
31 goods and services covered by sections 214.270 to 214.550 which includes a sale
32 of burial services to be performed at a future date] **burial merchandise or**
33 **burial services covered by sections 214.270 to 214.410 which is entered**
34 **into before the death of the individual for whom the burial**
35 **merchandise or burial services are intended;**

36 (8) "Cemetery service" or "burial service", those services performed by a
37 cemetery owner or operator licensed as an endowed care or nonendowed cemetery
38 including setting a monument or marker, setting a tent, excavating a grave,
39 interment, entombment, inurnment, setting a vault, or other related services
40 within the cemetery;

41 (9) "Columbarium", a building or structure for the inurnment of cremated
42 human remains;

43 (10) "Community mausoleum", a mausoleum containing a substantial area
44 of enclosed space and having either a heating, ventilating or air conditioning
45 system;

46 (11) "Department", department of insurance, financial institutions and
47 professional registration;

48 (12) "Developed acreage", the area which has been platted into grave
49 spaces and has been developed with roads, paths, features, or ornamentations and
50 in which burials can be made;

51 (13) "Director", director of the division of professional registration;

52 (14) "Division", division of professional registration;

53 (15) "Endowed care", the maintenance, repair and care of all burial space
54 subject to the endowment within a cemetery, including any improvements made
55 for the benefit of such burial space. Endowed care shall include the general

56 overhead expenses needed to accomplish such maintenance, repair, care and
57 improvements. Endowed care shall include the terms perpetual care, permanent
58 care, continual care, eternal care, care of duration, or any like term;

59 (16) "Endowed care cemetery", a cemetery, or a section of a cemetery,
60 which represents itself as offering endowed care and which complies with the
61 provisions of sections 214.270 to 214.410;

62 (17) "Endowed care fund", "endowed care trust", or "trust", any cash or
63 cash equivalent, to include any income therefrom, impressed with a trust by the
64 terms of any gift, grant, contribution, payment, devise or bequest to an endowed
65 care cemetery, or its endowed care trust, or funds to be delivered to an endowed
66 care cemetery's trust received pursuant to a contract and accepted by any
67 endowed care cemetery operator or his agent. This definition includes the terms
68 endowed care funds, maintenance funds, memorial care funds, perpetual care
69 funds, or any like term;

70 (18) "Escrow account", an account established in lieu of an endowed care
71 fund as provided under section 214.330 or an account used to hold deposits under
72 section 214.387;

73 (19) "Escrow agent", an attorney, title company, certified public
74 accountant or other person authorized by the division to exercise escrow powers
75 under the laws of this state;

76 (20) "Escrow agreement", an agreement subject to approval by the office
77 between an escrow agent and a cemetery operator or its agent or related party
78 with common ownership, to receive and administer payments under cemetery
79 prearranged contracts sold by the cemetery operator;

80 (21) "Family burial ground", a cemetery in which no burial space is sold
81 to the public and in which interments are restricted to persons related by blood
82 or marriage;

83 (22) "Fraternal cemetery", a cemetery owned, operated, controlled or
84 managed by any fraternal organization or auxiliary organizations thereof, in
85 which the sale of burial space is restricted solely to its members and their
86 immediate families;

87 (23) "Garden mausoleum", a mausoleum without a substantial area of
88 enclosed space and having its crypt and niche fronts open to the
89 atmosphere. Ventilation of the crypts by forced air or otherwise does not
90 constitute a garden mausoleum as a community mausoleum;

91 (24) "Government cemetery", or "municipal cemetery", a cemetery owned,

92 operated, controlled or managed by the federal government, the state or a
93 political subdivision of the state, including a county or municipality or
94 instrumentality thereof;

95 (25) "Grave" or "plot", a place of ground in a cemetery, used or intended
96 to be used for burial of human remains;

97 (26) "Human remains", the body of a deceased person in any state of
98 decomposition, as well as cremated remains;

99 (27) "Inurnment", placing an urn containing cremated remains in a burial
100 space;

101 (28) "Lawn crypt", a burial vault or other permanent container for a
102 casket which is permanently installed below ground prior to the time of the actual
103 interment. A lawn crypt may permit single or multiple interments in a grave
104 space;

105 (29) "Mausoleum", a structure or building for the entombment of human
106 remains in crypts;

107 (30) "Niche", a space in a columbarium used or intended to be used for
108 inurnment of cremated remains;

109 (31) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery
110 or a section of a cemetery for which no endowed care trust fund has been
111 established in accordance with sections 214.270 to 214.410;

112 (32) "Office", the office of endowed care cemeteries within the division of
113 professional registration;

114 (33) "Owner of burial space", a person to whom the cemetery operator or
115 his authorized agent has transferred the right of use of burial space;

116 (34) "Person", an individual, corporation, partnership, joint venture,
117 association, trust or any other legal entity;

118 (35) "Registry", the list of cemeteries maintained in the division office for
119 public review. The division may charge a fee for copies of the registry;

120 (36) "Religious cemetery", a cemetery owned, operated, controlled or
121 managed by any church, convention of churches, religious order or affiliated
122 auxiliary thereof in which the sale of burial space is restricted solely to its
123 members and their immediate families;

124 (37) "Surface lawn crypt", a sealed burial chamber whose lid protrudes
125 above the land surface;

126 (38) "Total acreage", the entire tract which is dedicated to or reserved for
127 cemetery purposes;

128 (39) "Trustee of an endowed care fund", the separate legal entity
129 **qualified under section 214.330** appointed as trustee of an endowed care fund.

214.276. 1. The division may refuse to issue or renew any license,
2 required pursuant to sections 214.270 to 214.516 for one or any combination of
3 causes stated in subsection 2 of this section. The division shall notify the
4 applicant in writing of the reasons for the refusal and shall advise the applicant
5 of his or her right to file a complaint with the administrative hearing commission
6 as provided by chapter 621, RSMo.

7 2. The division may cause a complaint to be filed with the administrative
8 hearing commission as provided in chapter 621, RSMo, against any holder of any
9 license, required by sections 214.270 to 214.516 or any person who has failed to
10 surrender his or her license, for any one or any combination of the following
11 causes:

12 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
13 alcoholic beverage to an extent that such use impairs a person's ability to perform
14 the work of any profession licensed or regulated by sections 214.270 to 214.516;

15 (2) The person has been finally adjudicated and found guilty, or entered
16 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws
17 of any state or of the United States, for any offense reasonably related to the
18 qualifications, functions or duties of any profession licensed or regulated
19 pursuant to sections 214.270 to 214.516, for any offense an essential element of
20 which is fraud, dishonesty or an act of violence, or for any offense involving moral
21 turpitude, whether or not sentence is imposed;

22 (3) Use of fraud, deception, misrepresentation or bribery in securing any
23 license, issued pursuant to sections 214.270 to 214.516 or in obtaining permission
24 to take any examination given or required pursuant to sections 214.270 to
25 214.516;

26 (4) Obtaining or attempting to obtain any fee, charge or other
27 compensation by fraud, deception or misrepresentation;

28 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation
29 or dishonesty in the performance of the functions or duties of any profession
30 regulated by sections 214.270 to 214.516;

31 (6) Violation of, or assisting or enabling any person to violate, any
32 provision of sections 214.270 to 214.516, or any lawful rule or regulation adopted
33 pursuant to sections 214.270 to 214.516;

34 (7) Impersonation of any person holding a license or allowing any person

35 to use his or her license;

36 (8) Disciplinary action against the holder of a license or other right to
37 practice any profession regulated by sections 214.270 to 214.516 granted by
38 another state, territory, federal agency or country upon grounds for which
39 revocation or suspension is authorized in this state;

40 (9) A person is finally adjudged insane or incompetent by a court of
41 competent jurisdiction;

42 (10) Assisting or enabling any person to practice or offer to practice any
43 profession licensed or regulated by sections 214.270 to 214.516 who is not
44 registered and currently eligible to practice pursuant to sections 214.270 to
45 214.516;

46 (11) Issuance of a license based upon a material mistake of fact;

47 (12) Failure to display a valid license;

48 (13) Violation of any professional trust or confidence;

49 (14) Use of any advertisement or solicitation which is false, misleading or
50 deceptive to the general public or persons to whom the advertisement or
51 solicitation is primarily directed;

52 (15) Willfully and through undue influence selling a burial space,
53 cemetery services or merchandise.

54 3. After the filing of such complaint, the proceedings shall be conducted
55 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the
56 administrative hearing commission that the grounds, provided in subsection 2 of
57 this section, for disciplinary action are met, the division may singly or in
58 combination, censure or place the person named in the complaint on probation on
59 such terms and conditions as the division deems appropriate for a period not to
60 exceed five years, or may suspend, or revoke the license or permit **or may**
61 **impose a penalty allowed by subsection 4 of section 214.410.** No new
62 license shall be issued to the owner or operator of a cemetery or to any
63 corporation controlled by such owner for three years after the revocation of the
64 certificate of the owner or of a corporation controlled by the owner.

65 4. [Operators of all existing endowed care or nonendowed care cemeteries
66 shall, prior to August twenty-eighth following August 28, 2001, apply for a license
67 pursuant to this section. All endowed care or nonendowed care cemeteries
68 operating in compliance with sections 214.270 to 214.516 prior to August
69 twenty-eighth following August 28, 2001, shall be granted a license by the
70 division upon receipt of application.

71 5.] The division may settle disputes arising under subsections 2 and 3 of
72 this section by consent agreement or settlement agreement between the division
73 and the holder of a license. Within such a settlement agreement, the division
74 may singly or in combination impose any discipline or penalties allowed by this
75 section or subsection 4 of section 214.410. Settlement of such disputes shall be
76 entered into pursuant to the procedures set forth in section 621.045, RSMo.

77 **5. Use of the procedures set out in this section shall not preclude**
78 **the application of any other remedy provided by this chapter.**

 214.277. 1. Upon application by the division, and the necessary burden
2 having been met, a court of general jurisdiction may grant an injunction,
3 restraining order or other order as may be appropriate to enjoin a person from:

4 (1) Offering to engage or engaging in the performance of any acts or
5 practices for which a certificate of registration or authority, permit or license is
6 required upon a showing that such acts or practices were performed or offered to
7 be performed without a certificate of registration or authority, permit or license;
8 or

9 (2) Engaging in any practice or business authorized by a certificate of
10 registration or authority, permit or license issued pursuant to this chapter upon
11 a showing that the holder presents a substantial probability of serious danger to
12 the health, safety or welfare of any resident of this state or client or patient of the
13 licensee.

14 2. [Any such action shall be commenced either in the county in which
15 such conduct occurred or in the county in which the defendant resides.

16 3.] Any action brought pursuant to this section shall be in addition to and
17 not in lieu of any penalty provided by this chapter and may be brought
18 concurrently with other actions to enforce this chapter.

 214.282. 1. **Each contract sold by a cemetery operator for**
2 **cemetery services or for grave lots, grave spaces, markers, monuments,**
3 **memorials, tombstones, crypts, niches, mausoleums, or other**
4 **receptacles shall be voidable by the purchaser and deemed**
5 **unenforceable unless:**

6 (1) **It is in writing;**

7 (2) **It is executed by a cemetery operator who is in compliance**
8 **with the licensing provisions of this chapter;**

9 (3) **It identifies the contract purchaser and identifies the**
10 **cemetery services or other items to be provided;**

11 **(4) It identifies the name and address of any trustee or escrow**
12 **agent that will receive payments made pursuant to the contract under**
13 **the provisions of sections 214.320, 214.330, or 214.387, if applicable;**

14 **(5) It contains the name and address of the cemetery operator;**
15 **and**

16 **(6) It identifies any grounds for cancellation by the purchaser or**
17 **by the cemetery operator on default of payment.**

18 **2. If a cemetery prearranged contract does not substantially**
19 **comply with the provisions of this section, all payments made under**
20 **such contract shall be recoverable by the purchaser, or the purchaser's**
21 **legal representative, from the contract seller or other payee thereof,**
22 **together with interest at the rate of ten percent per annum and all**
23 **reasonable costs of collection, including attorneys' fees.**

 214.283. 1. Any person, entity, association, city, town, village,
2 county or political subdivision that purchases, receives or holds any
3 real estate used for the burial of dead human bodies, excluding a family
4 burial ground, shall notify the office of the endowed care cemeteries of
5 the name, location and address of such real estate on a form approved
6 by the office, before October 1, 2010, or within thirty days of
7 purchasing, receiving or holding such land or of being notified by the
8 office of the requirements of this provision. No fee shall be charged for
9 such notification nor shall any penalty be assessed for failure to
10 register. This section shall not be deemed to exempt any operator of an
11 endowed care cemetery or non-endowed care cemetery from being duly
12 licensed as required by this chapter.

13 **2.** The division shall establish and maintain a registry of cemeteries and
14 the registry shall be available to the public for review at the division office or
15 copied upon request. The division may charge a fee for copies of the register.

16 **(1)** If, in the course of a land survey of property located in this state, a
17 surveyor licensed pursuant to chapter 327, RSMo, locates any cemetery which has
18 not been previously registered, the surveyor shall file a statement with the
19 division regarding the location of the cemetery. The statement shall be filed on
20 a form as defined by division rule. No fee shall be charged to the surveyor for
21 such filing.

22 **(2)** Any person, family, group, association, society or county surveyor may
23 submit to the division, on forms provided by the division, the names and locations
24 of any cemetery located in this state for inclusion in the registry. No fee shall be

25 charged for such submissions.

214.300. Any cemetery operator may, after October 13, 1961, qualify to
2 operate a cemetery which has been operated as a nonendowed cemetery for a
3 minimum of two years, as an endowed care cemetery by:

4 (1) So electing in compliance with section 214.280;

5 (2) Establishing an endowed care **trust** fund in cash of one thousand
6 dollars for each acre in said cemetery with a minimum of five thousand dollars
7 and a maximum of twenty-five thousand dollars;

8 (3) Filing the report required by section 214.340.

214.310. 1. Any cemetery operator who elects to operate a new cemetery
2 as an endowed care cemetery or who represents to the public that perpetual,
3 permanent, endowed, continual, eternal care, care of duration or similar care will
4 be furnished cemetery property sold shall create an endowed care **trust** fund and
5 shall deposit a minimum of twenty-five thousand dollars for cemeteries that have
6 in excess of one hundred burials annually or a minimum of five thousand dollars
7 for cemeteries that have one hundred or less burials annually in such fund before
8 selling or disposing of any burial space in said cemetery, or in lieu thereof such
9 cemetery owner may furnish a surety bond issued by a bonding company or
10 insurance company authorized to do business in this state in the face amount of
11 thirty thousand dollars, and such bond shall run to the office of endowed care
12 cemeteries for the benefit of the care **trust** funds held by such cemetery. This
13 bond shall be for the purpose of guaranteeing an accumulation of twenty-five
14 thousand dollars in such care **trust** fund and also for the further purpose of
15 assuring that the cemetery owner shall provide annual perpetual or endowment
16 care in an amount equal to the annual reasonable return on a secured cash
17 investment of twenty-five thousand dollars until twenty-five thousand dollars is
18 accumulated in said endowed care **trust** funds, and these shall be the conditions
19 of such surety bond; provided, however, the liability of the principal and surety
20 on the bond shall in no event exceed thirty thousand dollars. Provided further,
21 that whenever a cemetery owner which has made an initial deposit to the
22 endowed care **trust** fund demonstrates to the satisfaction of the administrator of
23 the office of endowed care cemeteries that more than twenty-five thousand dollars
24 has been accumulated in the endowed care **trust** fund, the cemetery owner may
25 petition the administrator of the office of endowed care cemeteries for an order
26 to dissolve the surety bond requirement, so long as at least twenty-five thousand
27 dollars always remains in the endowed care **trust** fund.

28 2. Construction of a mausoleum, lawn crypt, columbarium or crematorium
29 as part of a cemetery then operated as an endowed care cemetery shall not be
30 considered the establishment of a new cemetery for purposes of this section.

31 3. Any endowed care cemetery which does not maintain a [fully]
32 **adequately** staffed office in the county in which the cemetery is located shall
33 have prominently displayed on the premises a sign clearly stating the operator's
34 name, address and telephone number. If the operator does not reside in the
35 county in which the cemetery is located, the sign shall also state the name,
36 address and telephone number of a resident of the county who is the authorized
37 agent of the operator or the location of an office of the cemetery which is within
38 ten miles of such cemetery. In jurisdictions where ordinances require signs to
39 meet certain specifications, a weatherproof notice containing the information
40 required by this subsection shall be sufficient.

 214.320. 1. An operator of an endowed care cemetery shall establish and
2 deposit in an endowed care **trust** fund not less than the following amounts for
3 burial space sold or disposed of, with such deposits to the endowed care **trust**
4 fund to be made [semiannually] **monthly** on all burial space that has been fully
5 paid for to the date of deposit:

6 (1) A minimum of fifteen percent of the gross sales price, or twenty
7 dollars, whichever is greater, for each grave space sold;

8 (2) A minimum of ten percent of the gross sales price of each crypt or
9 niche sold in a community mausoleum, or a minimum of one hundred dollars for
10 each crypt or [ten dollars for each niche sold in a garden mausoleum] **fifty**
11 **dollars for each niche sold in a community mausoleum, whichever is**
12 **greater;**

13 (3) **A minimum of ten percent of the gross sales price of each**
14 **crypt or niche sold in a garden mausoleum, or a minimum of one**
15 **hundred dollars for each crypt or twenty-five dollars for each niche**
16 **sold in a garden mausoleum, whichever is greater;**

17 (4) A minimum of [seventy-five dollars per grave space for] **ten percent**
18 **of the gross sales price of each lawn crypt sold or a minimum of seventy-**
19 **five dollars, whichever is greater.**

20 2. Notwithstanding the provisions of subdivision (2) of subsection 1 of this
21 section, a cemetery operator who has made the initial deposit in trust as required
22 by sections 214.270 to 214.410 from his own funds, and not from funds deposited
23 with respect to sales of burial space, may deposit only one-half the minimum

24 amounts set forth in subdivisions (1) and (2) of subsection 1 of this section, until
25 he shall have recouped his entire initial deposit. Thereafter, he shall make the
26 minimum deposits required under subdivisions (1), (2) [and], (3), **and (4)** of
27 subsection 1 of this section.

28 3. **As required by section 214.340**, each operator of an endowed care
29 cemetery shall[, after August 28, 1990,] file with the division of professional
30 registration, on a form provided by the division, an annual endowed care trust
31 fund report. The operator of any cemetery representing the cemetery, or any
32 portion of the cemetery, as an endowed care cemetery shall make available to the
33 division for inspection or audit at any reasonable time only those cemetery
34 records and trust fund records necessary to determine whether the cemetery's
35 endowed care **trust** fund is in compliance with sections 214.270 to 214.410. Each
36 cemetery operator who has established a [segregated] **escrow** account pursuant
37 to section [214.385] **214.387** shall make available to the division for inspection
38 or audit at any reasonable time those cemetery records and financial institution
39 records necessary to determine whether the cemetery operator is in compliance
40 with the provisions of section [214.385. All documents, records, and work product
41 from any inspections or audits performed by or at the direction of the division
42 shall remain in the possession of the division of professional registration and
43 shall not be sent to the state board of embalmers and funeral directors. No
44 charge shall be made for such inspections or audits] **214.387**.

45 4. [If any endowed care cemetery operator conducts the trust fund
46 accounting and record keeping outside of this state, then such operator shall
47 maintain current and accurate copies of such accounting and record keeping
48 within this state and such copies shall be readily available to the division for
49 inspection or audit purposes.

50 5.] No cemetery operator shall operate or represent to the public by any
51 title, description, or similar terms that a cemetery provides endowed care unless
52 the cemetery is in compliance with the provisions of sections 214.270 to 214.410.

53 **5. A cemetery operator shall be exempt from the provisions of**
54 **chapter 436 for the sale of cemetery services or for grave lots, grave**
55 **spaces, markers, monuments, memorials, tombstones, crypts, niches or**
56 **mausoleums, outer burial containers or other receptacle. A cemetery**
57 **operator shall be prohibited from adjusting or establishing the sales**
58 **price of items with the intent of evading the trusting or escrow**
59 **provisions of this chapter.**

214.325. If the deposits to any endowed care **trust** fund [required by
2 sections 214.270 to 214.410] are less than the total sum required to be set aside
3 and deposited since the effective date of such sections, the cemetery operator
4 shall correct such deficiency by depositing not less than twenty percent of such
5 deficiency each year for five years [following August 28, 1990,] and shall file, on
6 the form provided by the division, a statement outlining the date and amount
7 such deposits were made. If the cemetery operator fails to correct the deficiency
8 **with respect to funds maintained under section 214.330**, the cemetery
9 operator shall thereafter not represent the cemetery as an endowed care
10 cemetery. Any funds held in the cemetery's endowed care trust shall continue to
11 be used for endowed care for that cemetery. The cemetery operator shall remain
12 subject to the provisions of sections 214.270 to 214.410 for any cemetery or any
13 section of the cemetery for which endowed care payments have been collected,
14 subject to the penalties contained in section 214.410, and civil actions as well as
15 subject to any regulations promulgated by the division. **For purposes of this**
16 **section, the term "deficiency" shall mean a deficiency in the amount**
17 **required to be deposited pursuant to section 214.320, or a deficiency**
18 **created by disbursements in excess of what is permitted under section**
19 **214.330 and shall not include or be affected by deficiencies or shortages**
20 **caused by the fluctuating value of investments.**

214.330. 1. [The endowed care fund required by sections 214.270 to
2 214.410 shall be permanently set aside in trust or in accordance with the
3 provisions of subsection 2 of this section. The trustee of the endowed care trust
4 shall be a state- or federally chartered financial institution authorized to exercise
5 trust powers in Missouri and located in this state. The income from the endowed
6 care fund shall be distributed to the cemetery operator at least annually or in
7 other convenient installments. The cemetery operator shall have the duty and
8 responsibility to apply the income to provide care and maintenance only for that
9 part of the cemetery in which burial space shall have been sold and with respect
10 to which sales the endowed care fund shall have been established and not for any
11 other purpose. The principal of such funds shall be kept intact and appropriately
12 invested by the trustee, or the independent investment advisor. An endowed care
13 trust agreement may provide that when the principal in an endowed care trust
14 exceeds two hundred fifty thousand dollars, investment decisions regarding the
15 principal and undistributed income may be made by a federally registered or
16 Missouri-registered independent qualified investment advisor designated by the

17 cemetery owner, relieving the trustee of all liability regarding investment
18 decisions made by such qualified investment advisor. It shall be the duty of the
19 trustee, or the investment advisor, in the investment of such funds to exercise the
20 diligence and care men of ordinary prudence, intelligence and discretion would
21 employ, but with a view to permanency of investment considering probable safety
22 of capital investment, income produced and appreciation of capital
23 investment. The trustee's duties shall be the maintenance of records and the
24 accounting for and investment of moneys deposited by the operator to the
25 endowed care fund. For the purposes of sections 214.270 to 214.410, the trustee
26 or investment advisor shall not be deemed to be responsible for the care, the
27 maintenance, or the operation of the cemetery, or for any other matter relating
28 to the cemetery, including, but not limited to, compliance with environmental
29 laws and regulations. With respect to cemetery property maintained by cemetery
30 care funds, the cemetery operator shall be responsible for the performance of the
31 care and maintenance of the cemetery property owned by the cemetery operator
32 and for the opening and closing of all graves, crypts, or niches for human remains
33 in any cemetery property owned by the cemetery operator.

34 2. If the endowed care cemetery fund is not permanently set aside in a
35 trust fund as required by subsection 1 of this section then the funds shall be
36 permanently set aside in a segregated bank account which requires the signature
37 of the cemetery owner and either the administrator of the office of endowed care
38 cemeteries, or the signature of a licensed practicing attorney with escrow powers
39 in this state as joint signatories for any distribution from the trust fund. No
40 funds shall be expended without the signature of either the administrator of the
41 office of endowed care cemeteries, or a licensed practicing attorney with escrow
42 powers in this state. The account shall be insured by the Federal Deposit
43 Insurance Corporation or comparable deposit insurance and held in the state- or
44 federally chartered financial institution authorized to do business in Missouri and
45 located in this state. The income from the endowed care fund shall be distributed
46 to the cemetery operator at least in annual or semiannual installments. The
47 cemetery operator shall have the duty and responsibility to apply the income to
48 provide care and maintenance only for that part of the cemetery in which burial
49 space shall have been sold and with respect to which sales the endowed care fund
50 shall have been established and not for any other purpose. The principal of such
51 funds shall be kept intact and appropriately invested by the cemetery operator
52 with written approval of either the administrator of the office of endowed care

53 cemeteries or a licensed practicing attorney with escrow powers in this state. It
54 shall be the duty of the cemetery owner in the investment of such funds to
55 exercise the diligence and care a person of reasonable prudence, intelligence and
56 discretion would employ, but with a view to permanency of investment
57 considering probable safety of capital investment, income produced and
58 appreciation of capital investment. The cemetery owner's duties shall be the
59 maintenance of records and the accounting for an investment of moneys deposited
60 by the operator to the endowed care fund. For purposes of sections 214.270 to
61 214.410, the administrator of the office of endowed care cemeteries or the licensed
62 practicing attorney with escrow powers in this state shall not be deemed to be
63 responsible for the care, maintenance, or operation of the cemetery. With respect
64 to cemetery property maintained by cemetery care funds, the cemetery operator
65 shall be responsible for the performance of the care and maintenance of the
66 cemetery property owned by the cemetery operator and for the opening and
67 closing of all graves, crypts, or niches for human remains in any cemetery
68 property owned by the cemetery operator.

69 3. The cemetery operator shall be accountable to the owners of burial
70 space in the cemetery for compliance with sections 214.270 to 214.410.

71 4. All endowed care funds shall be administered in accordance with an
72 endowed care fund agreement. The endowed care fund agreement shall be subject
73 to review and approval by the office of endowed care cemeteries or by a licensed
74 practicing attorney with escrow powers in this state. The endowed care cemetery
75 shall be notified in writing by the office of endowed care cemeteries or by a
76 licensed practicing attorney with escrow powers in this state regarding the
77 approval or disapproval of the endowed care fund agreement and regarding any
78 changes required to be made for compliance with this chapter and the rules and
79 regulations promulgated thereunder. A copy of the proposed endowed care fund
80 agreement shall be submitted to the office of endowed care cemeteries. The office
81 of endowed care cemeteries or a licensed practicing attorney with escrow powers
82 in this state shall notify the endowed care cemetery in writing of approval and
83 of any required change. Any amendment or change to the endowed care fund
84 agreement shall be submitted to the office of endowed care cemeteries or to a
85 licensed practicing attorney with escrow powers in this state for review and
86 approval. Said amendment or change shall not be effective until approved by the
87 office of endowed care cemeteries or by a licensed practicing attorney with escrow
88 powers in this state. All endowed care cemeteries shall be under a continuing

89 duty to file with the office of endowed care cemeteries or with a licensed
90 practicing attorney with escrow powers in this state and to submit for approval
91 any and all changes, amendment, or revisions of the endowed care fund
92 agreement.

93 5. No principal shall be distributed from an endowed care trust fund
94 except to the extent that a unitrust election is in effect with respect to such trust
95 under the provisions of section 469.411, RSMo.] **The endowed care trust fund**
96 **required by sections 214.270 to 214.410 shall be permanently set aside**
97 **in trust or in accordance with the provisions of subsection 2 of this**
98 **section. The trustee of the endowed care trust shall be a state or**
99 **federally chartered financial institution authorized to exercise trust**
100 **powers in Missouri. The contact information for a trust officer or duly**
101 **appointed representative of the trustee with knowledge and access to**
102 **the trust fund accounting and trust fund records must be disclosed to**
103 **the office or its duly authorized representative upon request.**

104 (1) The trust fund records, including all trust fund accounting
105 records, shall be maintained in the state of Missouri at all times or
106 shall be electronically stored so that the records may be made available
107 in the state of Missouri within fifteen business days of receipt of a
108 written request. The operator of an endowed care cemetery shall
109 maintain a current name and address of the trustee and the records
110 custodian for the endowed care trust fund and shall supply such
111 information to the office, or its representative, upon request.

112 (2) Missouri law shall control all endowed care trust funds and
113 the Missouri courts shall have jurisdiction over endowed care trusts
114 regardless of where records may be kept or various administrative
115 tasks may be performed.

116 2. An endowed care trust fund shall be administered in
117 accordance with Missouri law governing trusts, including but not
118 limited to the applicable provisions of chapters 456 and 469, except as
119 specifically provided in this subsection or where the provisions of
120 sections 214.270 to 214.410 provide differently, provided that a
121 cemetery operator shall not in any circumstances be authorized to
122 restrict, enlarge, change, or modify the requirements of this section or
123 the provisions of chapters 456 and 469 by agreement or otherwise.

124 (1) Income and principal of an endowed care trust fund shall be
125 determined under the provisions of law applicable to trusts, except that

126 the provisions of section 469.405 shall not apply.

127 (2) No principal shall be distributed from an endowed care trust
128 fund except to the extent that a unitrust election is in effect with
129 respect to such trust under the provisions of section 469.411.

130 (3) No right to transfer jurisdiction from Missouri under section
131 456.1-108 shall exist for endowed care trusts.

132 (4) All endowed care trusts shall be irrevocable.

133 (5) No trustee shall have the power to terminate an endowed
134 care trust fund under the provisions of section 456.4-414.

135 (6) A unitrust election made in accordance with the provisions
136 of chapter 469 shall be made by the cemetery operator in the terms of
137 the endowed care trust fund agreement itself, not by the trustee.

138 (7) No contract of insurance shall be deemed a suitable
139 investment for an endowed care trust fund.

140 (8) The income from the endowed care fund may be distributed
141 to the cemetery operator at least annually on a date designated by the
142 cemetery operator, but no later than sixty days following the end of the
143 trust fund year. Any income not distributed within sixty days following
144 the end of the trust's fiscal year shall be added to and held as part of
145 the principal of the trust fund.

146 3. The cemetery operator shall have the duty and responsibility
147 to apply the income distributed to provide care and maintenance only
148 for that part of the cemetery designated as an endowed care section
149 and not for any other purpose.

150 4. In addition to any other duty, obligation, or requirement
151 imposed by sections 214.270 to 214.410 or the endowed care trust
152 agreement, the trustee's duties shall be the maintenance of records
153 related to the trust and the accounting for and investment of moneys
154 deposited by the operator to the endowed care trust fund.

155 (1) For the purposes of sections 214.270 to 214.410, the trustee
156 shall not be deemed responsible for the care, the maintenance, or the
157 operation of the cemetery, or for any other matter relating to the
158 cemetery, or the proper expenditure of funds distributed by the trustee
159 to the cemetery operator, including, but not limited to, compliance with
160 environmental laws and regulations.

161 (2) With respect to cemetery property maintained by endowed
162 care funds, the cemetery operator shall be responsible for the

163 performance of the care and maintenance of the cemetery property.

164 5. If the endowed care cemetery fund is not permanently set
165 aside in a trust fund as required by subsection 1 of this section, then
166 the funds shall be permanently set aside in an escrow account in the
167 state of Missouri. Funds in an escrow account shall be placed in an
168 endowed care trust fund under subsection 1 if the funds in the escrow
169 account exceed three hundred fifty thousand dollars, unless otherwise
170 approved by the division for good cause. The account shall be insured
171 by the Federal Deposit Insurance Corporation or comparable deposit
172 insurance and held in a state or federally chartered financial
173 institution authorized to do business in Missouri and located in this
174 state.

175 (1) The interest from the escrow account may be distributed to
176 the cemetery operator at least in annual or semiannual installments,
177 but not later than six months following the calendar year. Any interest
178 not distributed within six months following the end of the calendar
179 year shall be added to and held as part of the principal of the account.

180 (2) The cemetery operator shall have the duty and responsibility
181 to apply the interest to provide care and maintenance only for that part
182 of the cemetery in which burial space shall have been sold and with
183 respect to which sales the escrow account shall have been established
184 and not for any other purpose. The principal of such funds shall be
185 kept intact. The cemetery operator's duties shall be the maintenance
186 of records and the accounting for an investment of moneys deposited
187 by the operator to the escrow account. For purposes of sections 214.270
188 to 214.410, the administrator of the office of endowed care cemeteries
189 shall not be deemed to be responsible for the care, maintenance, or
190 operation of the cemetery. With respect to cemetery property
191 maintained by cemetery care funds, the cemetery operator shall be
192 responsible for the performance of the care and maintenance of the
193 cemetery property owned by the cemetery operator.

194 (3) The division may approve an escrow agent if the escrow
195 agent demonstrates the knowledge, skill, and ability to handle escrow
196 funds and financial transactions and is of good moral character.

197 6. The cemetery operator shall be accountable to the owners of
198 burial space in the cemetery for compliance with sections 214.270 to
199 214.410.

200 7. Excluding funds held in an escrow account, all endowed care
201 trust funds shall be administered in accordance with an endowed care
202 trust fund agreement, which shall be submitted to the office by the
203 cemetery operator for review and approval. The endowed care
204 cemetery shall be notified in writing by the office of endowed care
205 cemeteries regarding the approval or disapproval of the endowed care
206 trust fund agreement and regarding any changes required to be made
207 for compliance with sections 214.270 to 214.410 and the rules and
208 regulations promulgated thereunder.

209 8. All endowed care cemeteries shall be under a continuing duty
210 to file with the office of endowed care cemeteries and to submit for
211 prior approval any and all changes, amendments, or revisions of the
212 endowed care trust fund agreement, at least thirty days before the
213 effective date of such change, amendment, or revision.

214 9. If the endowed care trust fund agreement, or any changes,
215 amendments, or revisions filed with the office, are not disapproved by
216 the office within thirty days after submission by the cemetery operator,
217 the endowed care trust fund agreement, or the related change,
218 amendment, or revision, shall be deemed approved and may be used by
219 the cemetery operator and the trustee. Notwithstanding any other
220 provision of this section, the office may review and disapprove an
221 endowed care trust fund agreement, or any submitted change,
222 amendment, or revision, after the thirty days provided herein or at any
223 other time if the agreement is not in compliance with sections 214.270
224 to 214.410 or the rules promulgated thereunder. Notice of disapproval
225 by the office shall be in writing and delivered to the cemetery operator
226 and the trustee within ten days of disapproval.

227 10. Funds in an endowed care trust fund or escrow account may
228 be commingled with endowed care funds for other endowed care
229 cemeteries, provided that the cemetery operator and the trustee shall
230 maintain adequate accounting records of the disbursements,
231 contributions, and income allocated for each cemetery.

232 11. By accepting the trusteeship of an endowed care trust or
233 accepting funds as an escrow agent pursuant to sections 214.270 to
234 214.410, the trustee or escrow agent submits personally to the
235 jurisdiction of the courts of this state and the office of endowed care
236 cemeteries regarding the administration of the trust or escrow account.

237 **A trustee or escrow agent shall consent in writing to the jurisdiction of**
238 **the state of Missouri and the office in regards to the trusteeship or the**
239 **operation of the escrow account and to the appointment of the office of**
240 **secretary of state as its agent for service of process regarding any**
241 **administrative or legal actions relating to the trust or the escrow**
242 **account, if it has no designated agent for service of process located in**
243 **this state. Such consent shall be filed with the office prior to accepting**
244 **funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow**
245 **agent on a form provided by the office by rule.**

214.335. 1. Any endowed care cemetery may require a contribution to the
2 endowed care fund or to a separate memorial care fund for each memorial or
3 monument installed on a grave in the cemetery. Such contribution, if required
4 by a cemetery, shall not exceed twenty cents per square inch of base area, and
5 shall be charged on every installation regardless of the person performing the
6 installation. Each contribution made pursuant to a contract or agreement
7 entered into after August 28, 1990, shall be entrusted and administered pursuant
8 to sections 214.270 to 214.410 for the endowed care fund. Each contribution
9 made pursuant to a contract or agreement entered into before August 28, 1990,
10 shall be governed by the law in effect at the time the contract or agreement was
11 entered into.

12 **2. If the deposits to any endowed care trust fund are less than**
13 **the total sum required to be set aside and deposited since the effective**
14 **date of such sections, the cemetery operator shall correct such**
15 **deficiency by depositing not less than twenty percent of such deficiency**
16 **each year for five years and shall file, on the form provided by the**
17 **division, a statement outlining the date and amount such deposits were**
18 **made. If the cemetery operator fails to correct the deficiency with**
19 **respect to funds maintained under section 214.330, the cemetery**
20 **operator shall thereafter not represent the cemetery as an endowed**
21 **care cemetery. Any funds held in the cemetery's endowed care trust**
22 **shall continue to be used for endowed care for that cemetery. The**
23 **cemetery operator shall remain subject to the provisions of sections**
24 **214.270 to 214.410 for any cemetery or any section of the cemetery for**
25 **which endowed care payments have been collected, subject to the**
26 **penalties contained in section 214.410, and civil actions, as well as**
27 **subject to any regulations promulgated by the division. For purposes**
28 **of this section, the term "deficiency" shall mean a deficiency in the**

29 amount required to be deposited pursuant to subsection 1 of this
30 section, or a deficiency created by disbursements in excess of what is
31 permitted under section 214.330 and shall not include or be affected by
32 deficiencies or shortages caused by the fluctuating value of
33 investments.

214.340. 1. Each operator of an endowed care cemetery shall maintain at
2 an office in the cemetery or, if the cemetery has no office in the cemetery, at an
3 office within a reasonable distance of the cemetery, the reports of the endowed
4 care **trust** fund's operation for the preceding seven years. Each report shall
5 contain, at least, the following information:

6 (1) Name and address of the trustee of the endowed care **trust** fund and
7 the depository, if different from the trustee;

8 (2) Balance per previous year's report;

9 (3) Principal contributions received since previous report;

10 (4) Total earnings since previous report;

11 (5) Total distribution to the cemetery operator since the previous report;

12 (6) Current balance;

13 (7) A statement of all assets listing cash, real or personal property, stocks,
14 bonds, and other assets, showing cost, acquisition date and current market value
15 of each asset;

16 (8) Total expenses, excluding distributions to cemetery operator, since
17 previous report; and

18 (9) A statement of the cemetery's total acreage and of its developed
19 acreage.

20 2. Subdivisions (1) through (7) of the report described in subsection 1
21 above shall be certified to under oath as complete and correct by a corporate
22 officer of the trustee. Subdivision (8) of such report shall be certified under oath
23 as complete and correct by an officer of the cemetery operator. Both the trustee
24 and cemetery operator or officer shall be subject to the penalty of making a false
25 affidavit or declaration.

26 3. The report shall be placed in the cemetery's office within ninety days
27 of the close of the trust's fiscal year. A copy of this report shall be filed by the
28 cemetery operator with the division of professional registration as condition of
29 license renewal as required by subsection 4 of section 214.275. [The report shall
30 not be sent to the state board of embalmers and funeral directors.]

31 4. Each cemetery operator who establishes [a segregated] **an escrow or**

32 **trust** account pursuant to [subsection 1 of section 214.385] **section 214.387**
33 shall file with the report required under subsection 1 of this section [a
34 segregated] **an escrow or trust** account report that shall provide the following
35 information:

36 (1) The [number of monuments, markers and memorials] **total face**
37 **value of all contracts for burial merchandise and services** that have been
38 deferred for delivery by purchase designation; **and**

39 (2) [The aggregate wholesale cost of all such monuments, markers and
40 memorials; and

41 (3)] The amount on deposit in the [segregated] **escrow or trust** account
42 established pursuant to section [214.385] **214.387**, and the account number **in**
43 **the case of an escrow account.**

214.345. 1. Any cemetery operator who negotiates the sale of burial space
2 in any cemetery located in this state shall provide each prospective owner of
3 burial space a written statement, which may be a separate form or a part of the
4 sales contract, which states and explains in plain language that the burial space
5 is part of an endowed care cemetery; that the cemetery has established and
6 maintains the endowed care **trust** fund required by law; and that the information
7 regarding the fund described in section 214.340 is available to the prospective
8 purchaser. If the burial space is in a nonendowed cemetery, or in a nonendowed
9 section of an endowed care cemetery, the cemetery operator shall state he has
10 elected not to establish an endowed care **trust** fund.

11 2. The operator of each endowed care cemetery shall, upon request, give
12 to the public for retention a copy of the endowed care **trust** fund annual report
13 prepared pursuant to the provisions of subsection 1 of section 214.340.

214.360. No cemetery operator, nor any director, officer or shareholder of
2 any cemetery may borrow or in any other way make use of the endowed care
3 **trust** funds for his own use, directly or indirectly, or for furthering or developing
4 his or any other cemetery, nor may any trustee lend or make such funds available
5 for said purpose or for the use of any operator or any director, officer or
6 shareholder of any cemetery.

214.363. In the event of a cemetery's bankruptcy, insolvency, or
2 assignment for the benefit of creditors, the endowed care **trust** funds shall not
3 be available to any creditor as assets of the cemetery's owner or to pay any
4 expenses of any bankruptcy or similar proceeding, but shall be retained intact to
5 provide for the future maintenance of the cemetery.

214.365. Prior to any action as provided in subsection 2 of section 214.205,
2 and when the division has information that a [public] cemetery is not providing
3 maintenance and care, has been abandoned, or has ceased operation, the division
4 may investigate the cemetery to determine the cemetery's current status. If the
5 division finds evidence that the cemetery is abandoned, is not conducting
6 business, or is not providing maintenance and care, the division may apply to the
7 circuit court for appointment as receiver, trustee, or successor in trust.

214.367. 1. **Prior to selling or otherwise disposing of a majority
2 of the business assets of a cemetery, or a majority of its stock or other
3 ownership interest, if a corporation or other organized business entity,
4 the cemetery operator shall provide written notification to the division
5 of its intent at least thirty days prior to the date set for the transfer, or
6 the closing of the sale, or the date set for termination of its
7 business. Such notice is confidential and shall not be considered a
8 public record subject to the provisions of chapter 610 until the sale of
9 the cemetery has been effectuated. Upon receipt of the written
10 notification, the division may take reasonable and necessary action to
11 determine that the cemetery operator has made proper plans to assure
12 that trust funds or funds held in an escrow account for or on behalf of
13 the cemetery will be set aside and used as provided in sections 214.270
14 to 214.410, including, but not limited to, an audit or examination of
15 books and records. The division may waive the requirements of this
16 subsection or may shorten the period of notification for good cause or
17 if the division determines in its discretion that compliance with its
18 provisions are not necessary.**

19 **2. A cemetery operator may complete the sale, transfer, or
20 cessation if the division does not disapprove the transaction within
21 thirty days after receiving notice. Nothing in this section shall be
22 construed to restrict any other right or remedy vested in the division
23 or the attorney general.**

24 **3. A prospective purchaser or transferee of [any endowed care] endowed
25 or unendowed cemetery, with the written consent of the cemetery operator, may
26 obtain a copy of the cemetery's most recent audit or inspection report from the
27 division. The division shall inform the prospective purchaser or transferee,
28 within thirty days, whether the cemetery may continue to operate and be
29 represented as [an endowed care] a cemetery.**

214.387. 1. [Upon written instructions from the purchaser of burial merchandise or burial services set forth in a cemetery prearranged contract, a cemetery may defer delivery of such burial merchandise or a warehouse receipt for the same under section 214.385, or performance of services, to a date designated by the purchaser, provided the cemetery operator, after deducting sales and administrative costs not to exceed twenty percent of the purchase price, deposits the remaining portion of the purchase price into an escrow or trust account as herein provided, within sixty days following receipt of payment from the purchaser. Funds so deposited pursuant to this section shall be maintained in such account until delivery of the property or the performance of services is made or the contract for the purchase of such property or services is canceled. The account is subject to inspection, examination or audit by the division. No withdrawals may be made from the escrow or trust account established pursuant to this section except as herein provided.

2. Upon written instructions from the purchaser of an interment, entombment, or inurnment cemetery service, a cemetery may defer performance of such service to a date designated by the purchaser, provided the cemetery operator, within forty-five days of the date the agreement is paid in full, deposits from its own funds an amount equal to eighty percent of the published retail price into a trustee account. Funds deposited in a trustee account pursuant to this section and section 214.385 shall be maintained in such account until delivery of the service is made or the agreement for the purchase of the service is canceled. No withdrawals may be made from the trustee account established pursuant to this section and section 214.385 except as provided herein. Money in this account shall be invested utilizing the prudent man theory and is subject to audit by the division. Names and addresses of depositories of such money shall be submitted with the annual report.

3. Upon the delivery of the interment, entombment, or inurnment cemetery service agreed upon by the cemetery or its agent, or the cancellation of the agreement for the purchase of such service, the cemetery operator may withdraw from the trustee account an amount equal to (i) the market value of the trustee account based on the most recent account statement issued to the cemetery operator, times (ii) the ratio the service's deposit in the account bears to the aggregate deposit of all services which are paid in full but not delivered. The trustee account may be inspected or audited by the division.

4. The provisions of this section shall apply to all agreements entered into

37 after August 28, 2002.] With the exception of sales made pursuant to
38 section 214.385, all sales of prearranged burial merchandise and
39 services shall be made pursuant to this section.

40 2. Upon written instructions from the purchaser of burial
41 merchandise or burial services set forth in a cemetery prearranged
42 contract, a cemetery may defer delivery of such burial merchandise or
43 a warehouse receipt for the same under section 214.385, or performance
44 of services, to a date designated by the purchaser, provided the
45 cemetery operator, after deducting sales and administrative costs
46 associated with the sale, not to exceed twenty percent of the purchase
47 price, deposits the remaining portion of the purchase price into an
48 escrow or trust account as herein provided, within sixty days following
49 receipt of payment from the purchaser. Funds so deposited pursuant
50 to this section shall be maintained in such account until delivery of the
51 property or the performance of services is made or the contract for the
52 purchase of such property or services is cancelled, and fees and costs
53 associated with the maintenance of the trust or escrow arrangement
54 shall be charged to these funds. The account is subject to inspection,
55 examination or audit by the division. No withdrawals may be made
56 from the escrow or trust account established pursuant to this section
57 except as herein provided.

58 3. Each escrow arrangement must comply with the following:

59 (1) The escrow agent shall be located in Missouri, authorized to
60 exercise escrow powers, and shall maintain the escrow records so that
61 they may be accessed and produced for inspection within five business
62 days of the agent's receipt of a written request made by the office or its
63 duly authorized representative. A cemetery operator shall not serve as
64 an escrow agent for the cemetery operator's account nor shall the
65 escrow agent be employed by or under common ownership with the
66 cemetery operator. The cemetery operator shall maintain a current
67 name and address for the escrow agent with the office, and shall obtain
68 written approval from the office before making any change in the name
69 or address of the escrow agent. Notwithstanding any other provision
70 of law, information regarding the escrow agent shall be deemed an
71 open record;

72 (2) The escrow account funds shall be maintained in depository
73 accounts at a Missouri financial institution that provides Federal

74 **Deposit Insurance Corporation or comparable deposit insurance;**

75 **(3) The escrow arrangement shall be administered by the escrow**
76 **agent pursuant to an agreement approved by the office under the same**
77 **filing and approval procedure as that set forth for endowed care trust**
78 **fund agreements in section 214.330;**

79 **(4) The operator shall establish a separate depository account for**
80 **each cemetery prearranged contract administered pursuant to this**
81 **subsection;**

82 **(5) The division may promulgate by rule a form escrow**
83 **agreement to be used by a cemetery operator operating pursuant to**
84 **this section.**

85 **4. Each trust must comply with the following:**

86 **(1) The trustee shall be a state or federally chartered financial**
87 **institution authorized to exercise trust powers in Missouri, provided**
88 **that a foreign financial institution must be approved by the office;**

89 **(2) The trust fund records, including all trust fund accounting**
90 **records, shall either be maintained in the state of Missouri or shall be**
91 **electronically stored so that the records may be made available within**
92 **fifteen business days of the trustee's receipt of a written request made**
93 **by the office or its duly authorized representative. The cemetery**
94 **operator shall maintain a current name and address of the trustee and**
95 **the records custodian and shall supply such information to the office**
96 **or its representative upon request;**

97 **(3) The principal of such funds shall be appropriately invested**
98 **pursuant to the prudent investor rule under chapter 469, provided that**
99 **no trust funds shall be invested in any term insurance product;**

100 **(4) Payments regarding two or more cemetery prearranged**
101 **contracts may be deposited into and commingled in the same trust, so**
102 **long as adequate records are made available to the trustee to account**
103 **for cemetery prearranged contracts on an individual basis with regard**
104 **to deposits, earnings, distributions, and any taxes;**

105 **(5) Trust instruments shall be subject to the same filing and**
106 **approval procedure as that set forth for endowed care trust fund**
107 **agreements under section 214.330;**

108 **(6) A trustee may commingle the funds from trusts of unrelated**
109 **cemetery operators for investment purposes if the trustee has adequate**
110 **accounting for the allocations, disbursements, payments, and income**

111 among the participating trusts.

112 5. The income from escrow accounts, after payment of expenses
113 associated with the arrangement, shall be distributed to the cemetery
114 operator. All other distributions from trusts and escrow accounts shall
115 be made pursuant to forms approved by the office. For performance of
116 a cemetery prearranged contract, a certificate of performance form
117 signed by the cemetery operator shall be required for distribution. For
118 cancellation of a cemetery prearranged contract, a certificate of
119 cancellation form signed by the cemetery operator and the purchaser
120 shall be required for distribution.

121 6. A cemetery prearranged contract is subject to cancellation as
122 follows:

123 (1) At any time before the final disposition of the deceased, or
124 before the services or merchandise described in this section are
125 provided, the purchaser may cancel the contract without cause by
126 delivering written notice thereof to the operator. Within fifteen days
127 after its receipt of such notice, the cemetery operator shall pay to the
128 purchaser a net amount equal to eighty percent of all payments made
129 under the contract. The cemetery operator shall be entitled to keep
130 one-half of the interest earned on trust funds. Upon delivery of the
131 purchaser's receipt for such payment to the escrow agent or trustee,
132 the escrow agent or trustee shall distribute to the cemetery operator
133 from the escrow account or trust an amount equal to all deposits made
134 into the escrow account or trust for the contract;

135 (2) Notwithstanding the provisions of subdivision (1) of this
136 subsection, if a purchaser is eligible, becomes eligible, or desires to
137 become eligible, to receive public assistance under chapter 208 or any
138 other applicable state or federal law, the purchaser may irrevocably
139 waive and renounce his right to cancel the contract pursuant to the
140 provisions of subdivision (1) of this section, which waiver and
141 renunciation shall be made in writing and delivered to the cemetery
142 operator;

143 (3) Notwithstanding the provisions of subdivision (1) of this
144 subsection, any purchaser, within thirty days of receipt of the executed
145 contract, may cancel the contract without cause by delivering written
146 notice thereof to the cemetery operator, and receive a full refund of all
147 payments made on the contract;

148 (4) Notwithstanding the provisions of subdivision (1) of this
149 subsection, once any purchase order is entered for the production or
150 manufacture of burial merchandise, per the purchaser's written
151 request, the purchaser's obligation to pay for said burial merchandise
152 shall be noncancellable;

153 (5) No funds subject to a purchaser's right of cancellation
154 hereunder shall be subject to the claims of the cemetery operator's
155 creditors.

156 7. Burial merchandise sold through a contract with a cemetery
157 or cemetery operator which is entered into after the death of the
158 individual for whom the burial merchandise is intended shall not be
159 subject to any trusting or escrow requirement of this section.

160 8. This section shall apply to all agreements entered into after
161 August 28, 2010.

214.389. 1. The division may direct a trustee, financial
2 institution, or escrow agent to suspend distribution from an endowed
3 care trust fund or escrow account if the cemetery operator does not
4 have a current and active cemetery operator license, has failed to file
5 an annual report, or if, after an audit or examination, the division
6 determines there is a deficiency in an endowed care trust fund or
7 escrow account maintained under section 214.330 and the cemetery
8 operator has failed to file a corrective action plan detailing how the
9 deficiency shall be remedied. For purposes of this section, a deficiency
10 shall only be deemed to exist if, after an audit or examination, the
11 division determines a cemetery operator has failed to deposit the total
12 aggregate of funds required to be deposited in trust or an escrow
13 account pursuant to section 214.320 or subsection 1 of section 214.335,
14 or has received disbursements from the trust or escrow account in
15 excess of what is permitted under section 214.330. No deficiency shall
16 be deemed to be created by fluctuations in the value of investments
17 held in trust or escrow.

18 2. The division shall provide written notification to the cemetery
19 operator and the trustee, financial institution, or escrow agent within
20 fourteen days of discovering a potential violation as described in this
21 section. Upon receipt of written notification from the division, the
22 cemetery operator shall have sixty days to cure any alleged violations
23 or deficiencies cited in the notification without a suspension of

24 distribution. If, after the sixty-day time period, the division feels the
25 cemetery has not cured the alleged violations or deficiencies cited in
26 the notification, the division may send a notice of suspension to the
27 cemetery operator that the division is ordering a suspension of
28 distribution as described in this section. In the event of a suspension
29 of distribution, the amount of any distribution suspended shall become
30 principal, with credit against the deficiency, unless the cemetery
31 operator files an appeal with a court of competent jurisdiction or with
32 the administrative hearing commission, as provided herein. In the
33 event of an appeal, a cemetery operator may request the court or
34 administrative hearing commission stay the suspension of distribution
35 after a showing of necessity and good cause or authorize payment from
36 the endowed care trust fund or escrow account for necessary expenses
37 from any amount subject to distribution.

38 3. Upon receipt of an order from the division suspending
39 distribution pursuant to this section, a trustee, financial institution, or
40 escrow agent shall immediately suspend distribution as required by the
41 order. A trustee, financial institution, or escrow agent shall be exempt
42 from liability for failure to distribute funds as ordered by the division.

43 4. A cemetery operator may appeal an order suspending
44 distribution pursuant to this section to the administrative hearing
45 commission. The administrative hearing commission shall receive
46 notice of such appeal within thirty days from the date the notice of
47 suspension was mailed by certified mail. Failure of a person whose
48 license was suspended to notify the administrative hearing commission
49 of his or her intent to appeal waives all rights to appeal the
50 suspension. Upon notice of such person's intent to appeal, a hearing
51 shall be held before the administrative hearing commission pursuant
52 to chapter 621.

53 5. A cemetery operator may apply for reinstatement of
54 distributions upon demonstration that the deficiencies or other
55 problems have been cured or that the operator has otherwise come into
56 compliance.

57 6. The division may promulgate rules to implement the
58 provisions of this section. Any rule or portion of a rule, as that term is
59 defined in section 536.010, that is created under the authority delegated
60 in this section shall become effective only if it complies with and is

61 subject to all of the provisions of chapter 536, and, if applicable, section
62 536.028. This section and chapter 536 are nonseverable and if any of
63 the powers vested with the general assembly pursuant to chapter 536,
64 to review, to delay the effective date, or to disapprove and annul a rule
65 are subsequently held unconstitutional, then the grant of rulemaking
66 authority and any rule proposed or adopted after August 28, 2010, shall
67 be invalid and void.

214.392. 1. The division shall:

2 (1) Recommend prosecution for violations of the provisions of sections
3 214.270 to 214.410 to the appropriate prosecuting, circuit attorney or to the
4 attorney general;

5 (2) Employ, within limits of the funds appropriated, such employees as are
6 necessary to carry out the provisions of sections 214.270 to 214.410;

7 (3) Be allowed to convey full authority to each city or county governing
8 body the use of inmates controlled by the department of corrections and the board
9 of probation and parole to care for abandoned cemeteries located within the
10 boundaries of each city or county;

11 (4) Exercise all budgeting, purchasing, reporting and other related
12 management functions;

13 (5) **Be authorized, within the limits of the funds appropriated, to**
14 **conduct investigations, examinations, or audits to determine**
15 **compliance with sections 214.270 to 214.410;**

16 (6) The division may promulgate rules necessary to implement the
17 provisions of sections 214.270 to 214.516, including but not limited to:

18 (a) Rules setting the amount of fees authorized pursuant to sections
19 214.270 to 214.516. The fees shall be set at a level to produce revenue that shall
20 not substantially exceed the cost and expense of administering sections 214.270
21 to 214.516. All moneys received by the division pursuant to sections 214.270 to
22 214.516 shall be collected by the director who shall transmit such moneys to the
23 department of revenue for deposit in the state treasury to the credit of the
24 endowed care cemetery audit fund created in section 193.265, RSMo;

25 (b) Rules to administer the inspection and audit provisions of the endowed
26 care cemetery law;

27 (c) Rules for the establishment and maintenance of the cemetery registry
28 pursuant to section 214.283.

29 2. Any rule or portion of a rule, as that term is defined in section 536.010,

30 RSMo, that is created under the authority delegated in this section shall become
31 effective only if it complies with and is subject to all of the provisions of chapter
32 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
33 536, RSMo, are nonseverable and if any of the powers vested with the general
34 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
35 or to disapprove and annul a rule are subsequently held unconstitutional, then
36 the grant of rulemaking authority and any rule proposed or adopted after August
37 28, 2001, shall be invalid and void.

214.400. Sections 214.270 to 214.410 shall be known as the "Cemetery
2 Endowed Care **Trust Fund Law**".

214.410. 1. Any cemetery operator who shall willfully violate any
2 provisions of sections 214.270 to 214.410 for which no penalty is otherwise
3 prescribed shall be deemed guilty of a misdemeanor and upon conviction thereof
4 shall be fined a sum not to exceed five hundred dollars or shall be confined not
5 more than six months or both.

6 2. Any cemetery operator who shall willfully violate any provision of
7 **[section] sections** 214.320, 214.330, 214.335, 214.340, 214.360 **[or], 214.385, or**
8 **214.387** shall be deemed guilty of a class D felony and upon conviction thereof
9 shall be fined a sum not to exceed ten thousand dollars or shall be confined not
10 more than five years or both. This section shall not apply to cemeteries or
11 cemetery associations which do not sell lots in the cemetery.

12 3. Any trustee who shall willfully violate any applicable provisions of
13 sections 214.270 to 214.410 shall have committed an unsafe and unsound banking
14 practice and shall be penalized as authorized by chapters 361 and 362,
15 RSMo. This subsection shall be enforced exclusively by the Missouri division of
16 finance for state chartered institutions and the Missouri attorney general for
17 federally chartered institutions.

18 4. Any person who shall willfully violate any provision of section 214.320,
19 214.330, 214.335, 214.340, 214.360 or 214.385 or violates any rule, regulation or
20 order of the division may, in accordance with the regulations issued by the
21 division, be assessed an administrative penalty by the division. The penalty shall
22 not exceed five thousand dollars for each violation and each day of the continuing
23 violation shall be deemed a separate violation for purposes of administrative
24 penalty assessment. However, no administrative penalty may be assessed until
25 the person charged with the violation has been given the opportunity for a
26 hearing on the violation. Penalty assessments received shall be deposited in the

27 endowed care cemetery audit fund created in section 193.265, RSMo.

214.500. Any cemetery located in a city [not within a county,] which has
2 become the property of such city pursuant to section 214.205 or a public tax sale
3 may be sold to another cemetery operator or a not-for-profit corporation which is
4 unrelated to the previous cemetery operator.

214.504. Any cemetery operator who purchases a cemetery from a city [not
2 within a county] pursuant to sections 214.500 to 214.516 shall not be liable for
3 any wrongful interments or errors made in the sale of plots prior to the cemetery
4 operator's purchase of the cemetery, nor shall such cemetery operator be liable
5 for multiple ownership of plots sold by such cemetery operator due to a lack of
6 adequate records in such cemetery operator's possession at the time of such
7 cemetery operator's purchase of such cemetery from the city, provided the
8 cemetery operator offers a plot of equal value for the interment, if such party can
9 prove ownership of the right to bury a person by presenting a contract for the
10 right to burial.

214.508. Any cemetery operator who purchases a cemetery from a city [not
2 within a county] shall not be held liable or responsible for any conditions existing
3 or actions taken which occurred prior to the cemetery operator's purchase from
4 such city; except that, the exemption provided in this section shall not relieve any
5 previous owner or wrongdoer for their actions related to such cemetery.

214.512. Any subsequent cemetery owner after a city [not within a
2 county] shall be exempt from the provisions of section 214.325 and section
3 214.410 for any deficiency existing prior to such city's ownership; except that,
4 such exemption shall not relieve any previous cemetery owners or wrongdoers
5 from the provisions of such sections.

214.516. Any cemetery owner subsequent to a city [not within a county],
2 regardless of whether such cemetery was previously registered as an endowed
3 care cemetery, held itself out to be an endowed care cemetery or was a
4 nonendowed care cemetery, shall comply with section 214.310 and register such
5 cemetery as an endowed care cemetery as if it were a newly created cemetery
6 with no interments at the time of such registration. Any contracts for the right
7 of burial sold after compliance with section 214.310 and all subsequent action of
8 a subsequent cemetery owner shall comply fully with the provisions of sections
9 214.270 to 214.410.

214.550. 1. For purposes of this section, the following terms mean:

2 (1) "Cremains", the [ashes that remain after cremation of a human corpse]

3 **remains of a human corpse after cremation;**

4 (2) "Operator", a church that owns and maintains a religious cemetery;

5 (3) "Religious cemetery", a cemetery owned, operated, controlled, or
6 managed by any church that has or would qualify for federal tax-exempt status
7 as a nonprofit religious organization pursuant to section 501(c) of the Internal
8 Revenue Code as amended;

9 (4) "Scatter garden", a location for the spreading of cremains set aside
10 within a cemetery.

11 2. It shall be lawful for any operator of a religious cemetery adjacent to
12 a church building or other building regularly used as a place of worship to
13 establish a scatter garden for the purpose of scattering human cremains.

14 3. The operator of any religious cemetery containing a scatter garden shall
15 maintain, protect, and supervise the scatter garden, and shall be responsible for
16 all costs incurred for such maintenance, protection, and supervision. Such
17 operator shall also maintain a record of all cremains scattered in the scatter
18 garden that shall include the name, date of death, and Social Security number of
19 each person whose cremains are scattered, and the date the cremains were
20 scattered.

21 4. A scatter garden established pursuant to this section shall be
22 maintained by the operator of the religious cemetery for as long as such operator
23 is in existence. Upon dissolution of such operator, all records of cremains shall
24 be transferred to the clerk of the city, town, or village in which the scatter garden
25 is located, or if the scatter garden is located in any unincorporated area, to the
26 county recorder.

301.142. 1. As used in sections 301.141 to 301.143, the following terms
2 mean:

3 (1) "Department", the department of revenue;

4 (2) "Director", the director of the department of revenue;

5 (3) "Other authorized health care practitioner" includes advanced practice
6 registered nurses licensed pursuant to chapter 335, RSMo, **physician assistants**
7 **licensed pursuant to chapter 334**, chiropractors licensed pursuant to chapter
8 331, RSMo, podiatrists licensed pursuant to chapter 330, RSMo, and optometrists
9 licensed pursuant to chapter 336, RSMo;

10 (4) "Physically disabled", a natural person who is blind, as defined in
11 section 8.700, RSMo, or a natural person with medical disabilities which
12 prohibits, limits, or severely impairs one's ability to ambulate or walk, as

13 determined by a licensed physician or other authorized health care practitioner
14 as follows:

15 (a) The person cannot ambulate or walk fifty or less feet without stopping
16 to rest due to a severe and disabling arthritic, neurological, orthopedic condition,
17 or other severe and disabling condition; or

18 (b) The person cannot ambulate or walk without the use of, or assistance
19 from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other
20 assistive device; or

21 (c) Is restricted by a respiratory or other disease to such an extent that
22 the person's forced respiratory expiratory volume for one second, when measured
23 by spirometry, is less than one liter, or the arterial oxygen tension is less than
24 sixty mm/hg on room air at rest; or

25 (d) Uses portable oxygen; or

26 (e) Has a cardiac condition to the extent that the person's functional
27 limitations are classified in severity as class III or class IV according to standards
28 set by the American Heart Association; or

29 (f) A person's age, in and of itself, shall not be a factor in determining
30 whether such person is physically disabled or is otherwise entitled to disabled
31 license plates and/or disabled windshield hanging placards within the meaning
32 of sections 301.141 to 301.143;

33 (5) "Physician", a person licensed to practice medicine pursuant to chapter
34 334, RSMo;

35 (6) "Physician's statement", a statement personally signed by a duly
36 authorized person which certifies that a person is disabled as defined in this
37 section;

38 (7) "Temporarily disabled person", a disabled person as defined in this
39 section whose disability or incapacity is expected to last no more than one
40 hundred eighty days;

41 (8) "Temporary windshield placard", a placard to be issued to persons who
42 are temporarily disabled persons as defined in this section, certification of which
43 shall be indicated on the physician's statement;

44 (9) "Windshield placard", a placard to be issued to persons who are
45 physically disabled as defined in this section, certification of which shall be
46 indicated on the physician's statement.

47 2. Other authorized health care practitioners may furnish to a disabled
48 or temporarily disabled person a physician's statement for only those physical

49 health care conditions for which such health care practitioner is legally
50 authorized to diagnose and treat.

51 3. A physician's statement shall:

52 (1) Be on a form prescribed by the director of revenue;

53 (2) Set forth the specific diagnosis and medical condition which renders
54 the person physically disabled or temporarily disabled as defined in this section;

55 (3) Include the physician's or other authorized health care practitioner's
56 license number; and

57 (4) Be personally signed by the issuing physician or other authorized
58 health care practitioner.

59 4. If it is the professional opinion of the physician or other authorized
60 health care practitioner issuing the statement that the physical disability of the
61 applicant, user, or member of the applicant's household is permanent, it shall be
62 noted on the statement. Otherwise, the physician or other authorized health care
63 practitioner shall note on the statement the anticipated length of the disability
64 which period may not exceed one hundred eighty days. If the physician or health
65 care practitioner fails to record an expiration date on the physician's statement,
66 the director shall issue a temporary windshield placard for a period of thirty
67 days.

68 5. A physician or other authorized health care practitioner who issues or
69 signs a physician's statement so that disabled plates or a disabled windshield
70 placard may be obtained shall maintain in such disabled person's medical chart
71 documentation that such a certificate has been issued, the date the statement was
72 signed, the diagnosis or condition which existed that qualified the person as
73 disabled pursuant to this section and shall contain sufficient documentation so
74 as to objectively confirm that such condition exists.

75 6. The medical or other records of the physician or other authorized
76 health care practitioner who issued a physician's statement shall be open to
77 inspection and review by such practitioner's licensing board, in order to verify
78 compliance with this section. Information contained within such records shall be
79 confidential unless required for prosecution, disciplinary purposes, or otherwise
80 required to be disclosed by law.

81 7. Owners of motor vehicles who are residents of the state of Missouri,
82 and who are physically disabled, owners of motor vehicles operated at least fifty
83 percent of the time by a physically disabled person, or owners of motor vehicles
84 used to primarily transport physically disabled members of the owner's household

85 may obtain disabled person license plates. Such owners, upon application,
86 accompanied by the documents and fees provided for in this section, a current
87 physician's statement which has been issued within ninety days proceeding the
88 date the application is made and proof of compliance with the state motor vehicle
89 laws relating to registration and licensing of motor vehicles, shall be issued motor
90 vehicle license plates for vehicles, other than commercial vehicles with a gross
91 weight in excess of twenty-four thousand pounds, upon which shall be inscribed
92 the international wheelchair accessibility symbol and the word "DISABLED" in
93 addition to a combination of letters and numbers. Such license plates shall be
94 made with fully reflective material with a common color scheme and design, shall
95 be clearly visible at night, and shall be aesthetically attractive, as prescribed by
96 section 301.130.

97 8. The director shall further issue, upon request, to such applicant one,
98 and for good cause shown, as the director may define by rule and regulations, not
99 more than two, removable disabled windshield hanging placards for use when the
100 disabled person is occupying a vehicle or when a vehicle not bearing the
101 permanent handicap plate is being used to pick up, deliver, or collect the
102 physically disabled person issued the disabled motor vehicle license plate or
103 disabled windshield hanging placard.

104 9. No additional fee shall be paid to the director for the issuance of the
105 special license plates provided in this section, except for special personalized
106 license plates and other license plates described in this subsection. Priority for
107 any specific set of special license plates shall be given to the applicant who
108 received the number in the immediately preceding license period subject to the
109 applicant's compliance with the provisions of this section and any applicable rules
110 or regulations issued by the director. If determined feasible by the advisory
111 committee established in section 301.129, any special license plate issued
112 pursuant to this section may be adapted to also include the international
113 wheelchair accessibility symbol and the word "DISABLED" as prescribed in this
114 section and such plate may be issued to any applicant who meets the
115 requirements of this section and the other appropriate provision of this chapter,
116 subject to the requirements and fees of the appropriate provision of this chapter.

117 10. Any physically disabled person, or the parent or guardian of any such
118 person, or any not-for-profit group, organization, or other entity which transports
119 more than one physically disabled person, may apply to the director of revenue
120 for a removable windshield placard. The placard may be used in motor vehicles

121 which do not bear the permanent handicap symbol on the license plate. Such
122 placards must be hung from the front, middle rearview mirror of a parked motor
123 vehicle and may not be hung from the mirror during operation. These placards
124 may only be used during the period of time when the vehicle is being used by a
125 disabled person, or when the vehicle is being used to pick up, deliver, or collect
126 a disabled person. When there is no rearview mirror, the placard shall be
127 displayed on the dashboard on the driver's side.

128 11. The removable windshield placard shall conform to the specifications,
129 in respect to size, color, and content, as set forth in federal regulations published
130 by the Department of Transportation. The removable windshield placard shall
131 be renewed every four years. The director may stagger the expiration dates to
132 equalize workload. Only one removable placard may be issued to an applicant
133 who has been issued disabled person license plates. Upon request, one additional
134 windshield placard may be issued to an applicant who has not been issued
135 disabled person license plates.

136 12. A temporary windshield placard shall be issued to any physically
137 disabled person, or the parent or guardian of any such person who otherwise
138 qualifies except that the physical disability, in the opinion of the physician, is not
139 expected to exceed a period of one hundred eighty days. The temporary
140 windshield placard shall conform to the specifications, in respect to size, color,
141 and content, as set forth in federal regulations published by the Department of
142 Transportation. The fee for the temporary windshield placard shall be two
143 dollars. Upon request, and for good cause shown, one additional temporary
144 windshield placard may be issued to an applicant. Temporary windshield
145 placards shall be issued upon presentation of the physician's statement provided
146 by this section and shall be displayed in the same manner as removable
147 windshield placards. A person or entity shall be qualified to possess and display
148 a temporary removable windshield placard for six months and the placard may
149 be renewed once for an additional six months if a physician's statement pursuant
150 to this section is supplied to the director of revenue at the time of renewal.

151 13. Application for license plates or windshield placards issued pursuant
152 to this section shall be made to the director of revenue and shall be accompanied
153 by a statement signed by a licensed physician or other authorized health care
154 practitioner which certifies that the applicant, user, or member of the applicant's
155 household is a physically disabled person as defined by this section.

156 14. The placard shall be renewable only by the person or entity to which

157 the placard was originally issued. Any placard issued pursuant to this section
158 shall only be used when the physically disabled occupant for whom the disabled
159 plate or placard was issued is in the motor vehicle at the time of parking or when
160 a physically disabled person is being delivered or collected. A disabled license
161 plate and/or a removable windshield hanging placard are not transferable and
162 may not be used by any other person whether disabled or not.

163 15. At the time the disabled plates or windshield hanging placards are
164 issued, the director shall issue a registration certificate which shall include the
165 applicant's name, address, and other identifying information as prescribed by the
166 director, or if issued to an agency, such agency's name and address. This
167 certificate shall further contain the disabled license plate number or, for
168 windshield hanging placards, the registration or identifying number stamped on
169 the placard. The validated registration receipt given to the applicant shall serve
170 as the registration certificate.

171 16. The director shall, upon issuing any disabled registration certificate
172 for license plates and/or windshield hanging placards, provide information which
173 explains that such plates or windshield hanging placards are nontransferable,
174 and the restrictions explaining who and when a person or vehicle which bears or
175 has the disabled plates or windshield hanging placards may be used or be parked
176 in a disabled reserved parking space, and the penalties prescribed for violations
177 of the provisions of this act.

178 17. Every new applicant for a disabled license plate or placard shall be
179 required to present a new physician's statement dated no more than ninety days
180 prior to such application. Renewal applicants will be required to submit a
181 physician's statement dated no more than ninety days prior to such application
182 upon their first renewal occurring on or after August 1, 2005. Upon completing
183 subsequent renewal applications, a physician's statement dated no more than
184 ninety days prior to such application shall be required every fourth year. Such
185 physician's statement shall state the expiration date for the temporary windshield
186 placard. If the physician fails to record an expiration date on the physician's
187 statement, the director shall issue the temporary windshield placard for a period
188 of thirty days. The director may stagger the requirement of a physician's
189 statement on all renewals for the initial implementation of a four-year period.

190 18. The director of revenue upon receiving a physician's statement
191 pursuant to this subsection shall check with the state board of registration for the
192 healing arts created in section 334.120, RSMo, or the Missouri state board of

193 nursing established in section 335.021, RSMo, with respect to physician's
194 statements signed by advanced practice registered nurses, or the Missouri state
195 board of chiropractic examiners established in section 331.090, RSMo, with
196 respect to physician's statements signed by licensed chiropractors, or with the
197 board of optometry established in section 336.130, RSMo, with respect to
198 physician's statements signed by licensed optometrists, or the state board of
199 podiatric medicine created in section 330.100, RSMo, with respect to physician's
200 statements signed by physicians of the foot or podiatrists to determine whether
201 the physician is duly licensed and registered pursuant to law. If such applicant
202 obtaining a disabled license plate or placard presents proof of disability in the
203 form of a statement from the United States Veterans' Administration verifying
204 that the person is permanently disabled, the applicant shall be exempt from the
205 four-year certification requirement of this subsection for renewal of the plate or
206 placard. Initial applications shall be accompanied by the physician's statement
207 required by this section. Notwithstanding the provisions of paragraph (f) of
208 subdivision (4) of subsection 1 of this section, any person seventy-five years of age
209 or older who provided the physician's statement with the original application
210 shall not be required to provide a physician's statement for the purpose of
211 renewal of disabled persons license plates or windshield placards.

212 19. The boards shall cooperate with the director and shall supply
213 information requested pursuant to this subsection. The director shall, in
214 cooperation with the boards which shall assist the director, establish a list of all
215 Missouri physicians and other authorized health care practitioners and of any
216 other information necessary to administer this section.

217 20. Where the owner's application is based on the fact that the vehicle is
218 used at least fifty percent of the time by a physically disabled person, the
219 applicant shall submit a statement stating this fact, in addition to the physician's
220 statement. The statement shall be signed by both the owner of the vehicle and
221 the physically disabled person. The applicant shall be required to submit this
222 statement with each application for license plates. No person shall willingly or
223 knowingly submit a false statement and any such false statement shall be
224 considered perjury and may be punishable pursuant to section 301.420.

225 21. The director of revenue shall retain all physicians' statements and all
226 other documents received in connection with a person's application for disabled
227 license plates and/or disabled windshield placards.

228 22. The director of revenue shall enter into reciprocity agreements with

229 other states or the federal government for the purpose of recognizing disabled
230 person license plates or windshield placards issued to physically disabled persons.

231 23. When a person to whom disabled person license plates or a removable
232 or temporary windshield placard or both have been issued dies, the personal
233 representative of the decedent or such other person who may come into or
234 otherwise take possession of the disabled license plates or disabled windshield
235 placard shall return the same to the director of revenue under penalty of
236 law. Failure to return such plates or placards shall constitute a class B
237 misdemeanor.

238 24. The director of revenue may order any person issued disabled person
239 license plates or windshield placards to submit to an examination by a
240 chiropractor, osteopath, or physician, or to such other investigation as will
241 determine whether such person qualifies for the special plates or placards.

242 25. If such person refuses to submit or is found to no longer qualify for
243 special plates or placards provided for in this section, the director of revenue
244 shall collect the special plates or placards, and shall furnish license plates to
245 replace the ones collected as provided by this chapter.

246 26. In the event a removable or temporary windshield placard is lost,
247 stolen, or mutilated, the lawful holder thereof shall, within five days, file with the
248 director of revenue an application and an affidavit stating such fact, in order to
249 purchase a new placard. The fee for the replacement windshield placard shall be
250 four dollars.

251 27. Fraudulent application, renewal, issuance, procurement or use of
252 disabled person license plates or windshield placards shall be a class A
253 misdemeanor. It is a class B misdemeanor for a physician, chiropractor,
254 podiatrist or optometrist to certify that an individual or family member is
255 qualified for a license plate or windshield placard based on a disability, the
256 diagnosis of which is outside their scope of practice or if there is no basis for the
257 diagnosis.

334.735. 1. As used in sections 334.735 to 334.749, the following terms
2 mean:

3 (1) "Applicant", any individual who seeks to become licensed as a
4 physician assistant;

5 (2) "Certification" or "registration", a process by a certifying entity that
6 grants recognition to applicants meeting predetermined qualifications specified
7 by such certifying entity;

8 (3) "Certifying entity", the nongovernmental agency or association which
9 certifies or registers individuals who have completed academic and training
10 requirements;

11 (4) "Department", the department of insurance, financial institutions and
12 professional registration or a designated agency thereof;

13 (5) "License", a document issued to an applicant by the board
14 acknowledging that the applicant is entitled to practice as a physician assistant;

15 (6) "Physician assistant", a person who has graduated from a physician
16 assistant program accredited by the American Medical Association's Committee
17 on Allied Health Education and Accreditation or by its successor agency, who has
18 passed the certifying examination administered by the National Commission on
19 Certification of Physician Assistants and has active certification by the National
20 Commission on Certification of Physician Assistants who provides health care
21 services delegated by a licensed physician. A person who has been employed as
22 a physician assistant for three years prior to August 28, 1989, who has passed the
23 National Commission on Certification of Physician Assistants examination, and
24 has active certification of the National Commission on Certification of Physician
25 Assistants;

26 (7) "Recognition", the formal process of becoming a certifying entity as
27 required by the provisions of sections 334.735 to 334.749;

28 (8) "Supervision", control exercised over a physician assistant working
29 within the same facility as the supervising physician sixty-six percent of the time
30 a physician assistant provides patient care, except a physician assistant may
31 make follow-up patient examinations in hospitals, nursing homes, patient homes,
32 and correctional facilities, each such examination being reviewed, approved and
33 signed by the supervising physician, except as provided by subsection 2 of this
34 section. For the purposes of this section, the percentage of time a physician
35 assistant provides patient care with the supervising physician on-site shall be
36 measured each calendar quarter. The supervising physician must be readily
37 available in person or via telecommunication during the time the physician
38 assistant is providing patient care. The board shall promulgate rules pursuant
39 to chapter 536, RSMo, for documentation of joint review of the physician assistant
40 activity by the supervising physician and the physician assistant. The physician
41 assistant shall be limited to practice at locations where the supervising physician
42 is no further than thirty miles by road using the most direct route available, or
43 in any other fashion so distanced as to create an impediment to effective

44 intervention and supervision of patient care or adequate review of services. Any
45 other provisions of this chapter notwithstanding, for up to ninety days following
46 the effective date of rules promulgated by the board to establish the waiver
47 process under subsection 2 of this section, any physician assistant practicing in
48 a health professional shortage area as of April 1, 2007, shall be allowed to
49 practice under the on-site requirements stipulated by the supervising physician
50 on the supervising physician form that was in effect on April 1, 2007.

51 2. The board shall promulgate rules under chapter 536, RSMo, to direct
52 the advisory commission on physician assistants to establish a formal waiver
53 mechanism by which an individual physician-physician assistant team may apply
54 for alternate minimum amounts of on-site supervision and maximum distance
55 from the supervising physician. After review of an application for a waiver, the
56 advisory commission on physician assistants shall present its recommendation to
57 the board for its advice and consent on the approval or denial of the
58 application. The rule shall establish a process by which the public is invited to
59 comment on the application for a waiver, and shall specify that a waiver may only
60 be granted if a supervising physician and physician assistant demonstrate to the
61 board's satisfaction in accordance with its uniformly applied criteria that:

62 (1) Adequate supervision will be provided by the physician for the
63 physician assistant, given the physician assistant's training and experience and
64 the acuity of patient conditions normally treated in the clinical setting;

65 (2) The physician assistant shall be limited to practice at locations where
66 the supervising physician is no further than fifty miles by road using the most
67 direct route available, or in any other fashion so distanced as to create an
68 impediment to effective intervention and supervision of patient care or adequate
69 review of services;

70 (3) The community or communities served by the supervising physician
71 and physician assistant would experience reduced access to health care services
72 in the absence of a waiver;

73 (4) The applicant will practice in an area designated at the time of
74 application as a health professional shortage area;

75 (5) Nothing in this section shall be construed to require a
76 physician-physician assistant team to increase their on-site requirement allowed
77 in their initial waiver in order to qualify for renewal of such waiver;

78 (6) If a waiver has been granted by the board of healing arts **on or after**
79 **August 28, 2009**, to a [physician] **physician-physician** assistant **team**

80 working in a rural health clinic under the federal Rural Health Clinic Services
81 Act, P.L. 95-210, as amended, no additional waiver shall be required **for the**
82 **physician-physician assistant team**, so long as the rural health clinic
83 maintains its status as a rural health clinic under such federal act, and such
84 [physician assistant and supervising physician] **physician-physician assistant**
85 **team** comply with federal supervision requirements. **No supervision**
86 **requirements in addition to the minimum federal law shall be required**
87 **for the physician-physician assistant team in a rural health clinic if a**
88 **waiver has been granted by the board. However, the board shall be**
89 **able to void a current waiver after conducting a hearing and upon a**
90 **finding of fact that the physician-physician assistant team has failed to**
91 **comply with such federal act or either member of the team has violated**
92 **a provision of this chapter;**

93 (7) A physician assistant shall only be required to seek a renewal of a
94 waiver every five years or when his or her supervising physician is a different
95 physician than the physician shown on the waiver application or they move their
96 primary practice location more than ten miles from the location shown on the
97 waiver application.

98 3. The scope of practice of a physician assistant shall consist only of the
99 following services and procedures:

100 (1) Taking patient histories;

101 (2) Performing physical examinations of a patient;

102 (3) Performing or assisting in the performance of routine office laboratory
103 and patient screening procedures;

104 (4) Performing routine therapeutic procedures;

105 (5) Recording diagnostic impressions and evaluating situations calling for
106 attention of a physician to institute treatment procedures;

107 (6) Instructing and counseling patients regarding mental and physical
108 health using procedures reviewed and approved by a licensed physician;

109 (7) Assisting the supervising physician in institutional settings, including
110 reviewing of treatment plans, ordering of tests and diagnostic laboratory and
111 radiological services, and ordering of therapies, using procedures reviewed and
112 approved by a licensed physician;

113 (8) Assisting in surgery;

114 (9) Performing such other tasks not prohibited by law under the
115 supervision of a licensed physician as the physician's assistant has been trained

116 and is proficient to perform;

117 (10) Physician assistants shall not perform abortions.

118 4. Physician assistants shall not prescribe nor dispense any drug,
119 medicine, device or therapy [independent of consultation with the supervising
120 physician] **unless pursuant to a physician supervision agreement in**
121 **accordance with the law**, nor prescribe lenses, prisms or contact lenses for the
122 aid, relief or correction of vision or the measurement of visual power or visual
123 efficiency of the human eye, nor administer or monitor general or regional block
124 anesthesia during diagnostic tests, surgery or obstetric procedures. Prescribing
125 and dispensing of drugs, medications, devices or therapies by a physician
126 assistant shall be pursuant to a physician assistant supervision agreement which
127 is specific to the clinical conditions treated by the supervising physician and the
128 physician assistant shall be subject to the following:

129 (1) A physician assistant shall only prescribe controlled substances in
130 accordance with section 334.747;

131 (2) The types of drugs, medications, devices or therapies prescribed or
132 dispensed by a physician assistant shall be consistent with the scopes of practice
133 of the physician assistant and the supervising physician;

134 (3) All prescriptions shall conform with state and federal laws and
135 regulations and shall include the name, address and telephone number of the
136 physician assistant and the supervising physician;

137 (4) A physician assistant or advanced practice nurse as defined in section
138 335.016, RSMo, may request, receive and sign for noncontrolled professional
139 samples and may distribute professional samples to patients;

140 (5) A physician assistant shall not prescribe any drugs, medicines, devices
141 or therapies the supervising physician is not qualified or authorized to prescribe;
142 and

143 (6) A physician assistant may only dispense starter doses of medication
144 to cover a period of time for seventy-two hours or less.

145 5. A physician assistant shall clearly identify himself or herself as a
146 physician assistant and shall not use or permit to be used in the physician
147 assistant's behalf the terms "doctor", "Dr." or "doc" nor hold himself or herself out
148 in any way to be a physician or surgeon. No physician assistant shall practice or
149 attempt to practice without physician supervision or in any location where the
150 supervising physician is not immediately available for consultation, assistance
151 and intervention, except as otherwise provided in this section, and in an

152 emergency situation, nor shall any physician assistant bill a patient
153 independently or directly for any services or procedure by the physician assistant.

154 6. For purposes of this section, the licensing of physician assistants shall
155 take place within processes established by the state board of registration for the
156 healing arts through rule and regulation. The board of healing arts is authorized
157 to establish rules pursuant to chapter 536, RSMo, establishing licensing and
158 renewal procedures, supervision, supervision agreements, fees, and addressing
159 such other matters as are necessary to protect the public and discipline the
160 profession. An application for licensing may be denied or the license of a
161 physician assistant may be suspended or revoked by the board in the same
162 manner and for violation of the standards as set forth by section 334.100, or such
163 other standards of conduct set by the board by rule or regulation. Persons
164 licensed pursuant to the provisions of chapter 335, RSMo, shall not be required
165 to be licensed as physician assistants. All applicants for physician assistant
166 licensure who complete a physician assistant training program after January 1,
167 2008, shall have a master's degree from a physician assistant program.

168 7. "Physician assistant supervision agreement" means a written
169 agreement, jointly agreed-upon protocols or standing order between a supervising
170 physician and a physician assistant, which provides for the delegation of health
171 care services from a supervising physician to a physician assistant and the review
172 of such services.

173 8. When a physician assistant supervision agreement is utilized to provide
174 health care services for conditions other than acute self-limited or well-defined
175 problems, the supervising physician or other physician designated in the
176 supervision agreement shall see the patient for evaluation and approve or
177 formulate the plan of treatment for new or significantly changed conditions as
178 soon as practical, but in no case more than two weeks after the patient has been
179 seen by the physician assistant.

180 9. At all times the physician is responsible for the oversight of the
181 activities of, and accepts responsibility for, health care services rendered by the
182 physician assistant.

183 10. It is the responsibility of the supervising physician to determine and
184 document the completion of at least a one-month period of time during which the
185 licensed physician assistant shall practice with a supervising physician
186 continuously present before practicing in a setting where a supervising physician
187 is not continuously present.

11. No contract or other agreement shall require a physician to act as a supervising physician for a physician assistant against the physician's will. A physician shall have the right to refuse to act as a supervising physician, without penalty, for a particular physician assistant. No contract or other agreement shall limit the supervising physician's ultimate authority over any protocols or standing orders or in the delegation of the physician's authority to any physician assistant, but this requirement shall not authorize a physician in implementing such protocols, standing orders, or delegation to violate applicable standards for safe medical practice established by hospital's medical staff.

12. Physician assistants shall file with the board a copy of their supervising physician form.

13. No physician shall be designated to serve as supervising physician for more than three full-time equivalent licensed physician assistants. This limitation shall not apply to physician assistant agreements of hospital employees providing inpatient care service in hospitals as defined in chapter 197, RSMo.

337.528. 1. If the committee finds merit to a complaint by an individual incarcerated or under the care and control of the department of corrections **or by an individual who has been ordered to be taken into custody, detained, or held under sections 632.480 to 632.513** and takes further investigative action, no documentation may appear on file or disciplinary action may be taken in regards to the licensee's license unless the provisions of subsection 2 of section 337.525 have been violated. Any case file documentation that does not result in the committee filing an action under subsection 2 of section 337.525 shall be destroyed within three months after the final case disposition by the board. No notification to any other licensing board in another state or any national registry regarding any investigative action shall be made unless the provisions of subsection 2 of section 337.525 have been violated.

2. Upon written request of the licensed professional counselor subject to a complaint, prior to August 28, 2007, by an individual incarcerated or under the care and control of the department of corrections **or prior to August 28, 2010, by an individual who has been ordered to be taken into custody, detained, or held under sections 632.480 to 632.513** that did not result in the committee filing an action under subsection 2 of section 337.525, the committee and the division of professional registration shall in a timely fashion:

- (1) Destroy all documentation regarding the complaint;
- (2) Notify any other licensing board in another state or any national

22 registry regarding the committee's actions if they have been previously notified
23 of the complaint; and

24 (3) Send a letter to the licensee that clearly states that the committee
25 found the complaint to be unsubstantiated, that the committee has taken the
26 requested action, and notify the licensee of the provisions of subsection 3 of this
27 section.

28 3. Any person who has been the subject of an unsubstantiated complaint
29 as provided in subsection 1 or 2 of this section shall not be required to disclose
30 the existence of such complaint in subsequent applications or representations
31 relating to their counseling professions.

338.100. 1. Every permit holder of a licensed pharmacy shall cause to be
2 kept in a uniform fashion consistent with this section a suitable **book, file, or**
3 **electronic recordkeeping system** in which shall be preserved, for a period of
4 not less than five years, the original or order of each drug which has been
5 compounded or dispensed at such pharmacy, according to and in compliance with
6 standards provided by the board, and shall produce the same in court or before
7 any grand jury whenever lawfully required. A licensed pharmacy may maintain
8 its prescription file on readable microfilm for records maintained over three
9 years. After September, 1999, a licensed pharmacy may preserve prescription
10 files on microfilm or by electronic media storage for records maintained over three
11 years. The pharmacist in charge shall be responsible for complying with the
12 permit holder's record-keeping system in compliance with this section. Records
13 maintained by a pharmacy that contain medical or drug information on patients
14 or their care shall be considered as confidential and shall only be released
15 according to standards provided by the board. Upon request, the pharmacist in
16 charge of such pharmacy shall furnish to the [prescribe] **prescriber**, and may
17 furnish to the person for whom such prescription was compounded or dispensed,
18 a true and correct copy of the original prescription. The file of original
19 prescriptions **kept in any format in compliance with this section**, and other
20 confidential records, as defined by law, shall at all times be open for inspection
21 by board of pharmacy representatives. **Records maintained in an electronic**
22 **recordkeeping system shall contain all information otherwise required**
23 **in a manual recordkeeping system. Electronic records shall be readily**
24 **retrievable. Pharmacies may electronically maintain the original**
25 **prescription or prescription order for each drug and may electronically**
26 **annotate any change or alteration to a prescription record in the**

27 **electronic recordkeeping system as authorized by law; provided**
28 **however, original written and faxed prescriptions shall be physically**
29 **maintained on file at the pharmacy under state and federal controlled**
30 **substance laws.**

31 2. An institutional pharmacy located in a hospital shall be responsible for
32 maintaining records of the transactions of the pharmacy as required by federal
33 and state laws and as necessary to maintain adequate control and accountability
34 of all drugs. This shall include a system of controls and records for the
35 requisitioning and dispensing of pharmaceutical supplies where applicable to
36 patients, nursing care units and to other departments or services of the
37 institution. Inspection performed pursuant to this subsection shall be consistent
38 with the provisions of section 197.100, RSMo.

39 3. **"Electronic recordkeeping system", as used in this section,**
40 **shall mean a system, including machines, methods of organization, and**
41 **procedures, that provides input, storage, processing, communications,**
42 **output, and control functions for digitized images of original**
43 **prescriptions.**

339.010. 1. A "real estate broker" is any person, partnership, **limited**
2 **partnership, limited liability company,** association, **professional**
3 **corporation,** or corporation, foreign or domestic who, for another, and for a
4 compensation or valuable consideration, does, or attempts to do, any or all of the
5 following:

- 6 (1) Sells, exchanges, purchases, rents, or leases real estate;
- 7 (2) Offers to sell, exchange, purchase, rent or lease real estate;
- 8 (3) Negotiates or offers or agrees to negotiate the sale, exchange,
9 purchase, rental or leasing of real estate;
- 10 (4) Lists or offers or agrees to list real estate for sale, lease, rental or
11 exchange;
- 12 (5) Buys, sells, offers to buy or sell or otherwise deals in options on real
13 estate or improvements thereon;
- 14 (6) Advertises or holds himself or herself out as a licensed real estate
15 broker while engaged in the business of buying, selling, exchanging, renting, or
16 leasing real estate;
- 17 (7) Assists or directs in the procuring of prospects, calculated to result in
18 the sale, exchange, leasing or rental of real estate;
- 19 (8) Assists or directs in the negotiation of any transaction calculated or

20 intended to result in the sale, exchange, leasing or rental of real estate;

21 (9) Engages in the business of charging to an unlicensed person an
22 advance fee in connection with any contract whereby the real estate broker
23 undertakes to promote the sale of that person's real estate through its listing in
24 a publication issued for such purpose intended to be circulated to the general
25 public;

26 (10) Performs any of the foregoing acts on behalf of the owner of real
27 estate, or interest therein, or improvements affixed thereon, for compensation.

28 2. A "real estate salesperson" is any person, **partnership, limited**
29 **partnership, limited liability company, association, professional**
30 **corporation, or corporation, domestic or foreign** who for a compensation
31 or valuable consideration becomes associated, either as an independent contractor
32 or employee, either directly or indirectly, with a real estate broker to do any of
33 the things above mentioned. The provisions of sections 339.010 to 339.180 and
34 sections 339.710 to 339.860 shall not be construed to deny a real estate
35 salesperson who is compensated solely by commission the right to be associated
36 with a broker as an independent contractor.

37 3. A "real estate broker-salesperson" is any person, **partnership,**
38 **limited partnership, limited liability company, association, professional**
39 **corporation, or corporation, domestic or foreign, who has a real estate**
40 **broker license in good standing, who for a compensation or valuable**
41 **consideration becomes associated, either as an independent contractor**
42 **or employee, either directly or indirectly, with a real estate broker to**
43 **do any of the things above mentioned. A real estate broker-salesperson**
44 **may not also operate as a real estate broker. The provisions of sections**
45 **339.010 to 339.180 and sections 339.710 to 339.860 shall not be construed**
46 **to deny a real estate salesperson who is compensated solely by**
47 **commission the right to be associated with a broker as an independent**
48 **contractor.**

49 [3.] 4. The term "commission" as used in sections 339.010 to 339.180 and
50 sections 339.710 to 339.860 means the Missouri real estate commission.

51 [4.] 5. "Real estate" for the purposes of sections 339.010 to 339.180 and
52 sections 339.710 to 339.860 shall mean, and include, leaseholds, as well as any
53 other interest or estate in land, whether corporeal, incorporeal, freehold or
54 nonfreehold, and the real estate is situated in this state.

55 [5.] 6. "Advertising" shall mean any communication, whether oral or

56 written, between a licensee or other entity acting on behalf of one or more
57 licensees and the public, and shall include, but not be limited to, business cards,
58 signs, insignias, letterheads, radio, television, newspaper and magazine ads,
59 Internet advertising, websites, display or group ads in telephone directories, and
60 billboards.

61 [6.] 7. The provisions of sections 339.010 to 339.180 and sections 339.710
62 to 339.860 shall not apply to:

63 (1) Any person, partnership, **limited partnership, limited liability**
64 **company**, association, **professional corporation**, or corporation who as owner,
65 lessor, or lessee shall perform any of the acts described in subsection 1 of this
66 section with reference to property owned or leased by them, or to the regular
67 employees thereof;

68 (2) Any licensed attorney-at-law;

69 (3) An auctioneer employed by the owner of the property;

70 (4) Any person acting as receiver, trustee in bankruptcy, administrator,
71 executor, or guardian or while acting under a court order or under the authority
72 of a will, trust instrument or deed of trust or as a witness in any judicial
73 proceeding or other proceeding conducted by the state or any governmental
74 subdivision or agency;

75 (5) Any person employed or retained to manage real property by, for, or
76 on behalf of the agent or the owner of any real estate shall be exempt from
77 holding a license, if the person is limited to one or more of the following activities:

78 (a) Delivery of a lease application, a lease, or any amendment thereof, to
79 any person;

80 (b) Receiving a lease application, lease, or amendment thereof, a security
81 deposit, rental payment, or any related payment, for delivery to, and made
82 payable to, a broker or owner;

83 (c) Showing a rental unit to any person, as long as the employee is acting
84 under the direct instructions of the broker or owner, including the execution of
85 leases or rental agreements;

86 (d) Conveying information prepared by a broker or owner about a rental
87 unit, a lease, an application for lease, or the status of a security deposit, or the
88 payment of rent, by any person;

89 (e) Assisting in the performance of brokers' or owners' functions,
90 administrative, clerical or maintenance tasks;

91 (f) If the person described in this section is employed or retained by, for,

92 or on behalf of a real estate broker, the real estate broker shall be subject to
93 discipline under this chapter for any conduct of the person that violates this
94 chapter or the regulations promulgated thereunder;

95 (6) Any officer or employee of a federal agency or the state government or
96 any political subdivision thereof performing official duties;

97 (7) Railroads and other public utilities regulated by the state of Missouri,
98 or their subsidiaries or affiliated corporations, or to the officers or regular
99 employees thereof, unless performance of any of the acts described in subsection
100 1 of this section is in connection with the sale, purchase, lease or other
101 disposition of real estate or investment therein unrelated to the principal
102 business activity of such railroad or other public utility or affiliated or subsidiary
103 corporation thereof;

104 (8) Any bank, trust company, savings and loan association, credit union,
105 insurance company, mortgage banker, or farm loan association organized under
106 the laws of this state or of the United States when engaged in the transaction of
107 business on its own behalf and not for others;

108 (9) Any newspaper, magazine, periodical, Internet site, Internet
109 communications, or any form of communications regulated or licensed by the
110 Federal Communications Commission or any successor agency or commission
111 whereby the advertising of real estate is incidental to its operation;

112 (10) Any developer selling Missouri land owned by the developer;

113 (11) Any employee acting on behalf of a nonprofit community, or regional
114 economic development association, agency or corporation which has as its
115 principal purpose the general promotion and economic advancement of the
116 community at large, provided that such entity:

117 (a) Does not offer such property for sale, lease, rental or exchange on
118 behalf of another person or entity;

119 (b) Does not list or offer or agree to list such property for sale, lease,
120 rental or exchange; or

121 (c) Receives no fee, commission or compensation, either monetary or in
122 kind, that is directly related to sale or disposal of such properties. An economic
123 developer's normal annual compensation shall be excluded from consideration as
124 commission or compensation related to sale or disposal of such properties; or

125 (12) Any neighborhood association, as that term is defined in section
126 441.500, RSMo, that without compensation, either monetary or in kind, provides
127 to prospective purchasers or lessors of property the asking price, location, and

128 contact information regarding properties in and near the association's
129 neighborhood, including any publication of such information in a newsletter,
130 Internet site, or other medium.

339.020. It shall be unlawful for any person, partnership, **limited**
2 **partnership, limited liability company,** association, **professional**
3 **corporation,** or corporation, foreign or domestic, to act as a real estate broker,
4 **real estate broker-salesperson,** or real estate salesperson, or to advertise or
5 assume to act as such without a license first procured from the commission.

339.030. A corporation, partnership, **limited partnership, limited**
2 **liability company, professional corporation,** or association shall be granted
3 a **broker's, broker-salesperson's, or salesperson's** license when the
4 **required fee is paid and:**

5 (1) For a real estate broker individual licenses have been issued to
6 every member, **general partner, associate, manager, member,** or officer of
7 such partnership, **limited partnership, limited liability company,**
8 association, **professional corporation,** or corporation who actively participates
9 in its brokerage business and to every person, **partnership, limited**
10 **partnership, limited liability company, professional corporation, or**
11 **corporation** who acts as a salesperson for such partnership, **limited**
12 **partnership, limited liability company,** association, **professional**
13 **corporation,** or corporation [and when the required fee is paid.]; or

14 (2) For a real estate broker-salesperson when an individual
15 broker-salesperson license has been issued to every general partner,
16 associate, manager, member, or officers of such partnership, limited
17 partnership, limited liability company, association, professional
18 corporation, or corporation who acts as a broker-salesperson, and
19 individual salesperson licenses have been issued to all general
20 partners, associates, managers, members, or officers of such
21 partnership, limited partnership, limited liability company, association,
22 professional corporation, or corporation who act as salesperson; or

23 (3) For a real estate salesperson when individual salesperson
24 licenses have been issued to all general partners, associates, managers,
25 members, or officers of such partnership, limited partnership, limited
26 liability company, association, professional corporation, or corporation
27 who act as a salesperson.

339.040. 1. Licenses shall be granted only to persons who present, and

2 corporations, associations, [or] partnerships, **limited partnerships and**
3 **limited liability companies** whose officers, **professional corporations,**
4 **managers,** associates, [or] **general** partners, **or members who actively**
5 **participate in such entity's brokerage, broker-salesperson, or**
6 **salesperson business** present, satisfactory proof to the commission that they:

- 7 (1) Are persons of good moral character; and
 - 8 (2) Bear a good reputation for honesty, integrity, and fair dealing; and
 - 9 (3) Are competent to transact the business of a broker or salesperson in
- 10 such a manner as to safeguard the interest of the public.

11 2. In order to determine an applicant's qualifications to receive a license
12 under sections 339.010 to 339.180 and sections 339.710 to 339.860, the
13 commission shall hold oral or written examinations at such times and places as
14 the commission may determine.

15 3. Each applicant for a broker or salesperson license shall be at least
16 eighteen years of age and shall pay the broker examination fee or the salesperson
17 examination fee.

18 4. Each applicant for a broker license shall be required to have
19 satisfactorily completed the salesperson license examination prescribed by the
20 commission. For the purposes of this section only, the commission may permit
21 a person who is not associated with a licensed broker to take the salesperson
22 examination.

23 5. Each application for a broker license shall include a certificate from the
24 applicant's broker or brokers that the applicant has been actively engaged in the
25 real estate business as a licensed salesperson for at least two years immediately
26 preceding the date of application, and shall include a certificate from a school
27 accredited by the commission under the provisions of section 339.045 that the
28 applicant has, within six months prior to the date of application, successfully
29 completed the prescribed broker curriculum or broker correspondence course
30 offered by such school, except that the commission may waive all or part of the
31 requirements set forth in this subsection when an applicant presents proof of
32 other educational background or experience acceptable to the commission. **Each**
33 **application for a broker-salesperson license shall include evidence of**
34 **the current broker license held by the applicant.**

35 6. Each application for a salesperson license shall include a certificate
36 from a school accredited by the commission under the provisions of section
37 339.045 that the applicant has, within six months prior to the date of application,

38 successfully completed the prescribed salesperson curriculum or salesperson
39 correspondence course offered by such school, except that the commission may
40 waive all or part of the educational requirements set forth in this subsection
41 when an applicant presents proof of other educational background or experience
42 acceptable to the commission.

43 7. The commission may issue a temporary work permit pending final
44 review and printing of the license to an applicant who appears to have satisfied
45 the requirements for licenses. The commission may, at its discretion, withdraw
46 the work permit at any time.

47 8. Every active broker, **broker-salesperson**, salesperson, officer,
48 **manager, general partner, member** or associate shall provide upon request to
49 the commission evidence that during the two years preceding he or she has
50 completed twelve hours of real estate instruction in courses approved by the
51 commission. The commission may, by rule and regulation, provide for individual
52 waiver of this requirement.

53 9. Each entity that provides continuing education required under the
54 provisions of subsection 8 of this section may make available instruction courses
55 that the entity conducts through means of distance delivery. The commission
56 shall by rule set standards for such courses. The commission may by regulation
57 require the individual completing such distance-delivered course to complete an
58 examination on the contents of the course. Such examination shall be designed
59 to ensure that the licensee displays adequate knowledge of the subject matter of
60 the course, and shall be designed by the entity producing the course and approved
61 by the commission.

62 10. In the event of the death or incapacity of a licensed broker, or of one
63 or more of the licensed **general** partners, officers, **managers, members** or
64 associates of a real estate partnership, **limited partnership, limited liability**
65 **company, professional corporation**, corporation, or association whereby the
66 affairs of the broker, partnership, [or] **limited partnership, limited liability**
67 **company, professional corporation**, corporation, or association cannot be
68 carried on, the commission may issue, without examination or fee, to the legal
69 representative or representatives of the deceased or incapacitated individual, or
70 to another individual approved by the commission, a temporary broker license
71 which shall authorize such individual to continue for a period to be designated
72 by the commission to transact business for the sole purpose of winding up the
73 affairs of the broker, partnership [or], **limited partnership, limited liability**

74 **company, professional corporation,** corporation, **or association** under the
75 supervision of the commission.

339.080. 1. The commission may refuse to examine or issue a license to
2 any person known by it to be guilty of any of the acts or practices specified in
3 subsection 2 of section 339.100, or to any person previously licensed whose license
4 has been revoked, or may refuse to issue a license to any association [or],
5 partnership, **corporation, professional corporation, limited partnership,**
6 **or limited liability company** of which such person is a [member] **manager,**
7 **officer or general partner, or in which as a member, partner or**
8 **associates such person has or exercises a controlling interest either**
9 **directly or indirectly,** or to any corporation of which such person is an officer
10 or in which as a stockholder such person has or exercises a controlling interest
11 either directly or indirectly.

12 2. Any person denied a license or the right to be examined shall be so
13 notified by the commission in writing stating the reasons for denial or refusal to
14 examine and informing the person so denied of his right to file a complaint with
15 the administrative hearing commission in accordance with the applicable
16 provisions of sections 621.015 to 621.198, RSMo, and the rules promulgated
17 thereunder. All notices hereunder shall be sent by registered or certified mail to
18 the last known address of the applicant.

339.110. The commission may refuse to issue a license to any person who
2 is known by it to have been found guilty of forgery, embezzlement, obtaining
3 money under false pretenses, extortion, criminal conspiracy to defraud, or other
4 like offense, or to any association [or], partnership, **corporation, professional**
5 **corporation, limited partnership, or limited liability company** of which
6 [the person is a member] **such person is a manager, officer or general**
7 **partner, or in which as a member, partner or associate such person has**
8 **or exercises a controlling interest either directly or indirectly,** or to any
9 corporation of which [the] **such** person is an officer or in which as a stockholder
10 [the] **such** person has or exercises a controlling interest either directly or
11 indirectly.

339.160. No person, partnership, **limited partnership, limited**
2 **liability company, professional corporations,** corporation, or association
3 engaged within this state in the business or acting in the capacity of a real estate
4 broker, **real estate broker-salesperson** or real estate salesperson shall bring
5 or maintain an action in any court in this state for the recovery of compensation

6 for services rendered in the buying, selling, exchanging, leasing, renting or
7 negotiating a loan upon any real estate without alleging and proving that such
8 person, partnership, **limited partnership, limited liability company,**
9 **professional corporation,** corporation, or association, **or its member,**
10 **manager, officer, general partner or associate, as applicable,** was a
11 licensed real estate broker, **broker-salesperson** or salesperson at the time when
12 the alleged cause of action arose.

339.170. Any person or corporation, **professional corporation,**
2 **partnership, limited partnership, limited liability company or**
3 **association** knowingly violating any provision of sections 339.010 to 339.180 and
4 sections 339.710 to 339.860 shall be guilty of a class B misdemeanor. Any officer
5 or agent of a corporation, or **any member, manager, officer, associate,**
6 **general partner** or agent of a partnership [or], association, **corporation,**
7 **professional corporation, limited partnership, or limited liability**
8 **company who actively participate in such entity's brokerage business,**
9 who shall knowingly and personally participate in or be an accessory to any
10 violation of sections 339.010 to 339.180 and sections 339.710 to 339.860, shall be
11 guilty of a class B misdemeanor. This section shall not be construed to release
12 any person from civil liability or criminal prosecution under any other law of this
13 state. The commission may cause complaint to be filed for violation of section
14 339.020 in any court of competent jurisdiction, and perform such other acts as
15 may be necessary to enforce the provisions hereof.

339.710. For purposes of sections 339.010 to 339.180, and sections 339.710
2 to 339.860, the following terms mean:

3 (1) "Adverse material fact", a fact related to the property not reasonably
4 ascertainable or known to a party which negatively affects the value of the
5 property. Adverse material facts may include matters pertaining to:

- 6 (a) Environmental hazards affecting the property;
- 7 (b) Physical condition of the property which adversely affects the value of
8 the property;
- 9 (c) Material defects in the property;
- 10 (d) Material defects in the title to the property;
- 11 (e) Material limitation of the party's ability to perform under the terms
12 of the contract;

13 (2) "Affiliated licensee", any broker or salesperson who works under the
14 supervision of a designated broker;

15 (3) "Agent", a person or entity acting pursuant to the provisions of this
16 chapter;

17 (4) "Broker disclosure form", the current form prescribed by the
18 commission for presentation to a seller, landlord, buyer or tenant who has not
19 entered into a written agreement for brokerage services;

20 (5) "Brokerage relationship", the relationship created between a
21 designated broker, the broker's affiliated licensees, and a client relating to the
22 performance of services of a broker as defined in section 339.010, and sections
23 339.710 to 339.860. If a designated broker makes an appointment of an affiliated
24 licensee or affiliated licensees pursuant to section 339.820, such brokerage
25 relationships are created between the appointed licensee or licensees and the
26 client. Nothing in this subdivision shall:

27 (a) Alleviate the designated broker from duties of supervision of the
28 appointed licensee or licensees; or

29 (b) Alter the designated broker's underlying contractual agreement with
30 the client;

31 (6) "Client", a seller, landlord, buyer, or tenant who has entered into a
32 brokerage relationship with a licensee pursuant to sections 339.710 to 339.860;

33 (7) "Commercial real estate", any real estate other than real estate
34 containing one to four residential units or real estate classified as agricultural
35 and horticultural property for assessment purposes pursuant to section 137.016,
36 RSMo. Commercial real estate does not include single family residential units
37 including condominiums, townhouses, or homes in a subdivision when that real
38 estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though
39 the units may be part of a larger building or parcel of real estate containing more
40 than four units;

41 (8) "Commission", the Missouri real estate commission;

42 (9) "Confidential information", information obtained by the licensee from
43 the client and designated as confidential by the client, information made
44 confidential by sections 339.710 to 339.860 or any other statute or regulation, or
45 written instructions from the client unless the information is made public or
46 becomes public by the words or conduct of the client to whom the information
47 pertains or by a source other than the licensee;

48 (10) "Customer", an actual or potential seller, landlord, buyer, or tenant
49 in a real estate transaction in which a licensee is involved but who has not
50 entered into a brokerage relationship with the licensee;

51 (11) "Designated agent", a licensee named by a designated broker as the
52 limited agent of a client as provided for in section 339.820;

53 (12) "Designated broker", any individual licensed as a broker who is
54 operating pursuant to the definition of real estate broker as defined in section
55 339.010, or any individual licensed as a broker who is appointed by a partnership,
56 **limited partnership**, association, limited liability corporation, **professional**
57 **corporation**, or a corporation engaged in the real estate brokerage business to
58 be responsible for the acts of the partnership, **limited partnership**, association,
59 limited liability [corporation,] **company**, **professional corporation** or
60 corporation. Every real estate **broker** partnership, **limited partnership**,
61 association, [or] limited liability [corporation] **company**, **professional**
62 **corporation** or corporation shall appoint a designated broker;

63 (13) "Designated transaction broker", a licensee named by a designated
64 broker or deemed appointed by a designated broker as the transaction broker for
65 a client pursuant to section 339.820;

66 (14) "Dual agency", a form of agency which may result when an agent
67 licensee or someone affiliated with the agent licensee represents another party
68 to the same transaction;

69 (15) "Dual agent", a limited agent who, with the written consent of all
70 parties to a contemplated real estate transaction, has entered into an agency
71 brokerage relationship, and not a transaction brokerage relationship, with and
72 therefore represents both the seller and buyer or both the landlord and tenant;

73 (16) "Exclusive brokerage agreement", means a written brokerage
74 agreement which provides that the broker has the sole right, through the broker
75 or through one or more affiliated licensees, to act as the exclusive limited agent,
76 representative, or transaction broker of the client or customer that meets the
77 requirements of section 339.780;

78 (17) "Licensee", a real estate broker or salesperson as defined in section
79 339.010;

80 (18) "Limited agent", a licensee whose duties and obligations to a client
81 are those set forth in sections 339.730 to 339.750;

82 (19) "Ministerial acts", those acts that a licensee may perform for a person
83 or entity that are informative in nature and do not rise to the level which
84 requires the creation of a brokerage relationship. Examples of these acts include,
85 but are not limited to:

86 (a) Responding to telephone inquiries by consumers as to the availability

- 87 and pricing of brokerage services;
- 88 (b) Responding to telephone inquiries from a person concerning the price
- 89 or location of property;
- 90 (c) Attending an open house and responding to questions about the
- 91 property from a consumer;
- 92 (d) Setting an appointment to view property;
- 93 (e) Responding to questions of consumers walking into a licensee's office
- 94 concerning brokerage services offered on particular properties;
- 95 (f) Accompanying an appraiser, inspector, contractor, or similar third
- 96 party on a visit to a property;
- 97 (g) Describing a property or the property's condition in response to a
- 98 person's inquiry;
- 99 (h) Showing a customer through a property being sold by an owner on his
- 100 or her own behalf; or
- 101 (i) Referral to another broker or service provider;
- 102 (20) "Residential real estate", all real property improved by a structure
- 103 that is used or intended to be used primarily for residential living by human
- 104 occupants and that contains not more than four dwelling units or that contains
- 105 single dwelling units owned as a condominium or in a cooperative housing
- 106 association, and vacant land classified as residential property. The term
- 107 "cooperative housing association" means an association, whether incorporated or
- 108 unincorporated, organized for the purpose of owning and operating residential
- 109 real property in Missouri, the shareholders or members of which, by reason of
- 110 their ownership of a stock or membership certificate, a proprietary lease, or other
- 111 evidence of membership, are entitled to occupy a dwelling unit pursuant to the
- 112 terms of a proprietary lease or occupancy agreement;
- 113 (21) "Single agent", a licensee who has entered into a brokerage
- 114 relationship with and therefore represents only one party in a real estate
- 115 transaction. A single agent may be one of the following:
- 116 (a) "Buyer's agent", which shall mean a licensee who represents the buyer
- 117 in a real estate transaction;
- 118 (b) "Landlord's agent", which shall mean a licensee who represents a
- 119 landlord in a leasing transaction;
- 120 (c) "Seller's agent", which shall mean a licensee who represents the seller
- 121 in a real estate transaction; and
- 122 (d) "Tenant's agent", which shall mean a licensee who represents the

123 tenant in a leasing transaction;

124 (22) "Subagent", a designated broker, together with the broker's affiliated
125 licensees, engaged by another designated broker, together with the broker's
126 affiliated or appointed affiliated licensees, to act as a limited agent for a client,
127 or a designated broker's unappointed affiliated licensees engaged by the
128 designated broker, together with the broker's appointed affiliated licensees, to act
129 as a limited agent for a client. A subagent owes the same obligations and
130 responsibilities to the client pursuant to sections 339.730 to 339.740 as does the
131 client's designated broker;

132 (23) "Transaction broker", any licensee acting pursuant to sections
133 339.710 to 339.860, who:

134 (a) Assists the parties to a transaction without an agency or fiduciary
135 relationship to either party and is, therefore, neutral, serving neither as an
136 advocate or advisor for either party to the transaction;

137 (b) Assists one or more parties to a transaction and who has not entered
138 into a specific written agency agreement to represent one or more of the parties;
139 or

140 (c) Assists another party to the same transaction either solely or through
141 licensee affiliates. Such licensee shall be deemed to be a transaction broker and
142 not a dual agent, provided that, notice of assumption of transaction broker status
143 is provided to the buyer and seller immediately upon such default to transaction
144 broker status, to be confirmed in writing prior to execution of the contract.

**339.845. If the commission receives a notice of delinquent taxes
2 from the director of revenue under the provisions of section 324.010
3 regarding a real estate broker or salesperson, the commission shall
4 immediately send a copy of such notice to the real estate broker with
5 which the real estate broker or salesperson is associated.**

344.010. As used in this chapter the following words or phrases mean:

2 (1) "Board", the Missouri board of nursing home administrators;

3 (2) "Long-term care facility", any residential care facility, assisted living
4 facility, intermediate care facility or skilled nursing facility, as defined in section
5 198.006, RSMo, or similar facility licensed by states other than Missouri;

6 (3) "Nursing home", any institution or facility defined as an assisted living
7 facility, **residential care facility**, intermediate care facility, or skilled nursing
8 facility for licensing purposes by section 198.006, RSMo, whether proprietary or
9 nonprofit;

10 (4) "Nursing home administrator", a person who administers, manages,
11 supervises, or is in general administrative charge of a nursing home, whether
12 such individual has an ownership interest in the home, and whether his functions
13 and duties are shared with one or more individuals.

344.020. No person shall act or serve in the capacity of a nursing home
2 administrator without first procuring a license from the Missouri board of nursing
3 home administrators as provided in sections 344.010 to 344.108. The board may
4 issue a separate license to administrators of **residential care facilities that**
5 **were licensed as a residential care facility II on or before August 27,**
6 **2006, that continues to meet the licensure standards for a residential**
7 **care facility II in effect on August 27, 2006, and** assisted living facilities,
8 as defined in section 198.006, RSMo. Any individual who receives a license to
9 operate **a residential care facility or** an assisted living facility is not thereby
10 authorized to operate any intermediate care facility or skilled nursing facility as
11 those terms are defined in section 198.006, RSMo.

630.575. 1. There is hereby established within the department of
2 **mental health the "Missouri Eating Disorder Council" which shall**
3 **consist of the following persons to be selected by and the number of**
4 **members to be determined by the director of the department of mental**
5 **health:**

6 (1) Director's designees from the department of mental health;
7 (2) Eating disorder researchers, clinicians, and patient advocacy
8 groups; and
9 (3) The general public.

10 2. The council shall:

11 (1) Oversee the eating disorder education and awareness
12 programs established in section 630.580.

13 (2) Identify whether adequate treatment and diagnostic services
14 are available in the state; and

15 (3) Assist the department of mental health in identifying eating
16 disorder research projects.

17 3. Members of the council shall serve four-year terms, with the
18 initial terms of the members staggered as two-year, three-year, and
19 four-year terms. The members of the council may be reappointed. The
20 members of the council shall not receive compensation for their service
21 on the council, but may, subject to appropriation, be reimbursed for

22 their actual and necessary expenses incurred as members of the
23 council.

24 4. The council shall conduct an organizational meeting at the call
25 of the director of the department of mental health. At such meeting,
26 the council shall select a chair and vice chair of the
27 council. Subsequent meetings of the council shall be called as
28 necessary by the chair of the council or the director of the department
29 of mental health.

630.580. 1. The department of mental health, in collaboration
2 with the departments of health and senior services, elementary and
3 secondary education, and higher education and in consultation with the
4 Missouri eating disorder council established in section 630.575, shall
5 develop and implement the following education and awareness
6 programs:

7 (1) Health care professional education and training programs
8 designed to prevent and treat eating disorders. Such programs shall
9 include:

10 (a) Discussion of various strategies with patients from at-risk
11 and diverse populations to promote positive behavior change and
12 healthy lifestyles to prevent eating disorders;

13 (b) Identification of individuals with eating disorders and those
14 who are at risk for developing an eating disorder;

15 (c) Conducting a comprehensive assessment of individual and
16 familial health risk factors;

17 (2) Education and training programs for elementary and
18 secondary and higher education professionals. Such programs shall
19 include:

20 (a) Distribution of educational materials to middle and high
21 school students in both public and private schools, including but not
22 limited to utilization of the National Women's Health Information
23 Center's Body Wise materials;

24 (b) Development of a curriculum which focuses on a healthy
25 body image, identifying the warning signs and behaviors associated
26 with an eating disorder, and ways to assist the individual, friends, or
27 family members who may have an eating disorder; and

28 (3) General eating disorder awareness and education programs.

29 2. The department of mental health may seek the cooperation

30 **and assistance of any state department or agency, as the department**
31 **deems necessary, in the development and implementation of the**
32 **awareness and education programs implemented under this section.**

[214.290. Any cemetery operator who within ninety days
2 from the effective date of sections 214.270 to 214.410 elects to
3 operate a cemetery which exists on the effective date of sections
4 214.270 to 214.410 as an endowed care cemetery or who represents
5 to the public that perpetual, permanent, endowed, continual,
6 eternal care, care of duration or similar care will be furnished
7 cemetery property sold, shall before selling or disposing of any
8 interment space or lots in said cemetery after the date of such
9 election, establish a minimum endowed care and maintenance fund
10 in cash in the amount required by section 214.300 unless an
11 endowed care fund is already in existence to which regular deposits
12 have been made (whether or not the fund then existing shall be in
13 the minimum amount required under section 214.300).]

Bill ✓

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